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SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."

ROBIN CARNAHAN

SECRETARY OF STATE

MISSOURI REGISTER

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Robin Carnahan

Administrative Rules Division
James C. Kirkpatrick State Information Center
600 W. Main
Jefferson City, MO 65101
(573) 751-4015

Director
Waylene W. Hiles

•

Editors

Curtis W. Treat Sally L. Reid

Associate Editor
Sarah Jorgenson

•

Publication Technician
Jacqueline D. White

•

Administrative Assistant
Lauren A. Bauman

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at http://www.sos.mo.gov/adrules/pubsched.asp

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HOW TO CITE RULES AND RSMo

RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	***Code of State Regulations***	**Division**	**Chapter**	**Rule**
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation , i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—The most recent version of the statute containing the section number and the date.

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment, or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register.* If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety (90)-day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:
Boldface text indicates new matter.
[Bracketed text indicates matter being deleted.]

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits

PROPOSED AMENDMENT

3 CSR 10-5.205 Permits Required: Exceptions. The commission is amending section (1).

PURPOSE: This amendment standardizes the department's program for exemption of hunter education certification for those individuals with developmental disabilities that prevent them from passing the hunter education certification tests and corrects an improper reference to the Missouri driver license.

(1) Any person who chases, pursues, takes, transports, ships, buys, sells, possesses, or uses wildlife in any manner must first obtain the prescribed hunting, fishing, trapping, or other permit, or be exempted under 3 CSR 10-9.110, with the following exceptions:

(A) A resident landowner or lessee, as defined in this Code, may hunt, trap, or fish as prescribed in Chapters 6, 7, and 8 without permit (except landowner deer and turkey hunting permits, Migratory Bird Hunting Permit, and Conservation Order Permit as prescribed), but only on land s/he owns or, in the case of the lessee, upon which s/he resides, and may transport and possess wildlife so taken*[.]***;**

(B) Any resident of Missouri sixty-five (65) years of age or older may take fish, live bait, clams, mussels, turtles, and frogs as provided in Chapter 6 without permit (except trout permit or daily tag in areas where prescribed); provided, while fishing, s/he carries a valid Missouri *[motor vehicle operator's]* **driver** license, notarized affidavit, or similar official document proving his/her eligibility based on residency and age, and shall submit documentation for inspection by any agent of the department on request*[.]***;**

(C) Any resident of Missouri sixty-five (65) years of age or older may take wildlife as provided in Chapter 7 without permit (except all special hunting permits, *[the]* Migratory Bird Hunting Permit, and Conservation Order Permit as prescribed); provided, while hunting, s/he carries a valid Missouri *[motor vehicle operator's]* **driver** license, notarized affidavit, or similar official document proving his/her eligibility based on residency and age, and shall submit documentation for inspection by any agent of the department on request*[.]***;**

(D) Any person fifteen (15) years of age or younger may take fish, live bait, clams, mussels, turtles, and frogs as provided in Chapter 6 without permit (except trout permit or daily tag in areas where prescribed); except that fish may be taken only by gig, bow, crossbow, snagging, snaring, grabbing, and by pole and line*[.]***;**

(E) Any person fifteen (15) years of age or younger may take wildlife (except deer and turkey) as provided in Chapter 7 without permit provided, s/he is in the immediate presence of a properly licensed adult hunter who is eighteen (18) years of age or older and has in his/her possession a valid hunter education certificate card*[,]* or was born before January 1, 1967. Persons under eleven (11) years of age may not purchase firearms deer and turkey hunting permits except as provided in subsection (1)(F) of this rule (see 3 CSR 10-5.215(4))*[.]***;**

(F) Any person at least six (6) but not older than fifteen (15) years of age may purchase Deer and Turkey Hunting Permits without display of a hunter education certificate card. Such person must hunt in the immediate presence of a properly licensed adult hunter who is eighteen (18) years of age or older and has in his/her possession a valid hunter education certificate card*[,]* or was born before January 1, 1967*[.]***;**

(G) Any resident of Missouri fifteen (15) years of age or younger may take wildlife as provided in Chapter 8 without permit, except for cable restraint device requirements in rule 3 CSR 10-8.510 subsection (4)(B)*[.]***;**

(H) Any person born on or after January 1, 1967, and at least sixteen (16) years of age and who does not possess a valid hunter education certificate card may purchase an Apprentice Hunter Authorization for no more than two (2) permit years (March 1 through the last day of February). The Apprentice Hunter Authorization allows the holder to purchase any firearms hunting permit as provided in this chapter without display of a hunter education certificate card. Such person must hunt in the immediate presence of a properly licensed adult hunter who is eighteen (18) years of age or older and who has in his/her possession a valid hunter education certificate card*[,]* or was born before January 1, 1967*[.]***;**

(I) Any resident of Missouri with a developmental disability as defined in section 630.005, RSMo, born on or after January 1, 1967, and at least sixteen (16) years of age and who has taken the Hunter Education Certification Course, but fails to successfully pass the certification tests, may purchase any firearms hunting

permit as provided in this chapter without display of a valid hunter education certificate card; provided s/he carries a physician's statement provided by the department and signed by a licensed physician qualified to evaluate and treat the condition described and certifies the person has this disability. Such person must hunt in the immediate presence of a properly licensed adult hunter who is eighteen (18) years of age or older and who has in his/her possession a valid hunter education certificate card or was born before January 1, 1967. Printed copies of the physician's statement form can be obtained from the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180 and online at www.missouriconservation.org;

*[(I)]***(J)** Any hospital patient may fish without permit on the grounds of the hospital where under treatment*[.]***;**

*[(J)]***(K)** The director may issue special fishing permits for specified dates without cost to supervised groups involved in rehabilitation programs or groups of hospital patients or persons with disabilities under therapy*[.]***;**

*[(K)]***(L)** The director may issue special fishing permits authorizing persons assigned as trainees to a training or rehabilitation unit performing organized conservation or agricultural work under governmental supervision on federal, state, county, or municipal lands to take fish by gig and pole and line methods and to take frogs by fishing methods on the public lands where such conservation or agricultural work is being performed, under regulations applicable to the area. Any person while exercising such privileges shall carry identification, issued by the training agency, showing current assignment to the training or rehabilitation unit*[.]***;**

*[(L)]***(M)** For educational purposes, the director may waive fishing permit or tag requirements for specified periods at specified sites and may authorize fishing in restricted waters*[.]***;**

*[(M)]***(N)** Any resident of Missouri having a visual acuity not exceeding **twenty/two hundred (**20/200**)** in the better eye with maximum correction, or having twenty degrees (20°) or less field of visual concentric contraction, and any resident who is so severely and permanently disabled as to be unable to move freely without the aid of a wheelchair, may take fish, live bait, clams, mussels, turtles, and frogs as provided in Chapter 6 without permit (except trout permit or daily tag in areas where prescribed); provided, while fishing, s/he carries a certified statement of eligibility from a licensed ophthalmologist or optometrist or from a licensed physician*[.]***;**

*[(N)]***(O)** Any resident of Missouri with cerebral palsy or mental retardation as defined in section 630.005, RSMo, and who is so severely disabled that s/he cannot fish alone, may take fish, live bait, clams, mussels, turtles, and frogs as provided in Chapter 6 without permit (except trout permit or daily tag in areas where prescribed); provided, while fishing, s/he is accompanied by a licensed adult fisherman and possesses a certified statement of eligibility from a licensed physician qualified to evaluate and treat the developmentally disabled*[.]***;**

*[(O)]***(P)** Any honorably discharged military veteran having a service-related disability of sixty percent (60%) or greater, or who was a prisoner of war during military service, may take fish, live bait, clams, mussels, turtles, and frogs as provided in Chapter 6 without permit (except trout permit or daily tag in areas where prescribed), and may take wildlife as provided in Chapter 7 without permit (except deer and turkey hunting permits**,** *[and the]* Migratory Bird Hunting Permit**,** and Conservation Order Permit as prescribed); provided, while hunting or fishing, s/he carries a certified statement of eligibility from the U.S. Department of Veterans Affairs*[.]***;**

*[(P)]***(Q)** Any Missouri resident who is the owner of land that wholly encloses a body of water, or any member of his/her immediate household, may fish without permit in those waters. In the case of corporate ownership, this privilege shall apply to those corporate owners whose domicile is on such corporate-owned land*[.]***;**

*[(Q)]***(R)** Any person may fish without permit, trout permit, and prescribed area daily tag during free fishing days. Free fishing days are the Saturday and Sunday following the first Monday in June*[.]***; and**

*[(R)]***(S)** A customer or guest of a licensed trout fishing area may fish for trout without permit (see 3 CSR 10-9.645).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed July 22, 1974, effective Dec. 31, 1974. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed March 7, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 9—Wildlife Code: Confined Wildlife: Privileges, Permits, Standards

PROPOSED AMENDMENT

3 CSR 10-9.110 General Prohibition; Applications. The commission proposes to amend section (4) of this rule.

PURPOSE: This amendment will allow the importation of eggs and gametes from out-of-state to be exempt from the Salmincola spp-free certification while maintaining the requirement for live fish. A misspelling is also corrected.

(4) Live fish, their eggs, and gametes of the family *Salmonidae* (trouts, char, salmon) may be imported to the state only by the holder of a salmonid importation permit and any other appropriate state permit. An importation permit shall be required for each shipment and will be issued at no charge. Application forms for the salmonid importation permit can be obtained from the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180 and online at www.missouriconservation.org. The application for salmonid importation permit must be received not less than fifteen (15) nor more than eighty (80) days prior to the proposed date of shipment. Prior to permit issuance, the immediate source of the importation must be currently certified as negative for viral hemorrhagic septicemia, infectious pancreatic necrosis, infectious *[hematopietic]* **hematopoietic** necrosis, *Myxobolus cerebralis,* or other diseases which may threaten fish stocks within the state, must have been certified negative for the previous three (3) consecutive years**,** and must not pose a threat of introducing unwanted species. *[The immediate source of importation must be certified as currently free of Salmincola spp.]* **When importing live fish, the immediate source of importation must be certified as currently free of *Salmincola* spp.** Certification will only be accepted from federal, state, or industry personnel approved by the department and only in accordance with provisions on the permit application form. Fish, eggs, and gametes imported under this permit are subject to inspection by authorized agents of the department and this inspection may include removal of reasonable samples of fish or eggs for biological examination.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section

*252.240, RSMo 2000. This rule was previously filed as 3 CSR 10-4.110(5), (6), and (10). Original rule filed June 26, 1975, effective July 7, 1975. For intervening history, please consult the **Code of State Regulations**. Amended: Filed March 7, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for Department Areas

PROPOSED AMENDMENT

3 CSR 10-11.120 Pets and Hunting Dogs. The commission proposes to amend section (1) and add paragraph (1)(A)8. of this rule.

PURPOSE: This amendment establishes a prohibition on pets and hunting dogs on White Alloe Creek Conservation Area.

(1) Pets and hunting dogs are permitted but must be on a leash or confined at all times, except as otherwise provided by signs, area brochures**,** or this chapter.

(A) Pets and hunting dogs are prohibited on the following department areas:

1. Burr Oak Woods Conservation Area**;**
2. Cape Girardeau Conservation Campus Nature Center**;**
3. Engelmann Woods Natural Area**;**
4. Powder Valley Conservation Nature Center**;**
5. Rockwoods Reservation**;**
6. Runge Conservation Nature Center**;**
7. Springfield Conservation Nature Center**; and**
8. **White Alloe Creek Conservation Area.**

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the **Code of State Regulations**. Amended: Filed March 7, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for Department Areas

PROPOSED AMENDMENT

3 CSR 10-11.205 Fishing, Methods and Hours. The commission proposes to amend subsection (6)(F), add paragraph (10)(A)5., and renumber subsequent paragraphs of this rule.

PURPOSE: This amendment would move the winter trout program from Lake 24 to Lake 3 on the August A. Busch Memorial Conservation Area and allow seining of bait in designated areas on the Fountain Grove Conservation Area.

(6) On August A. Busch Memorial Conservation Area:

(F) On Lakes **3,** 21, 22, 23, *[24,]* and 28, from November 1 through January 31, not more than one (1) pole and line may be used by one (1) person at any time and the use of natural or scented baits as chum is prohibited.

(10) Seining or trapping live bait, including tadpoles, is prohibited on all lakes and ponds, except as otherwise provided in this chapter.

(A) Seining or trapping live bait, excluding all frogs and tadpoles, in compliance with 3 CSR 10-6.605 is permitted on designated lakes and ponds on the following department areas:

1. Atlanta Conservation Area**;**
2. B.K. Leach Memorial Conservation Area**;**
3. Bob Brown Conservation Area**;**
4. Eagle Bluffs Conservation Area**;**
5. **Fountain Grove Conservation Area;**
*[5.]***6.** Grand Pass Conservation Area**;**
*[6.]***7.** Long Branch Lake Management Lands**;**
*[7.]***8.** Locust Creek Conservation Area**;**
*[8.]***9.** Nodaway Valley Conservation Area**;**
*[9.]***10.** Rebel's Cove Conservation Area**; and**
*[10.]***11.** Ted Shanks Conservation Area**.**

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the **Code of State Regulations**. Amended: Filed March 7, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for Department Areas

PROPOSED AMENDMENT

3 CSR 10-11.210 Fishing, Daily and Possession Limits. The commission proposes to amend subsection (8)(B) of this rule.

PURPOSE: This amendment would move the winter trout program from Lake 24 to Lake 3 on the August A. Busch Memorial Conservation Area.

(8) On August A. Busch Memorial Conservation Area:

(B) On Lakes **3,** 22, **and** 23, *[and 24,]* no person shall continue to fish for any species after having four (4) trout in possession.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed March 7, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.110 Use of Boats and Motors. The commission proposes to amend subsection (2)(BB) of this rule.

PURPOSE: This amendment changes names for consistency of five (5) lakes located in St. Louis County under cooperative management agreement with the department.

(2) Boats are prohibited on the following areas:

(BB) St. Louis County (Bee Tree **Park** Lake, *[Bellefontaine Park Lake,]* **Blackjack Lake, Carp Lake, Fountain Lake, Island Lake,** Jarville Lake, *[Suson Park Lakes Nos. 1, 2, and 3,]* Tilles Park Lake*[, Veteran's Memorial Park Lake]*)

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed March 7, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.115 Bullfrogs and Green Frogs. The commission proposes to amend paragraph (1)(B)15. of this rule.

PURPOSE: This amendment changes names for consistency of six (6) lakes located in St. Louis County under cooperative management agreement with the department.

(1) Bullfrogs and green frogs may be taken during the statewide season only by hand, handnet, atlatl, gig, bow, snagging, snaring, grabbing, or pole and line except as further restricted by this chapter.

(B) Only pole and line may be used to take frogs on the following areas:

1. Ballwin (New Ballwin Park Lake, Vlasis Park Lake)**;**
2. Butler City Lake**;**
3. Fenton (Preslar Lake, Upper Fabick Lake, Westside Lake)**;**
4. Ferguson (January-Wabash Park Lake)**;**
5. Jennings (Koeneman Park Lake)**;**
6. Kirksville (Spur Pond)**;**
7. Kirkwood (Walker Lake)**;**
8. Liberty (Fountain Bluff Park Ponds Nos. 1, 2, 3, 4, 5, 6, 7, and 8)**;**
9. Macon County (Fairgrounds Lake)**;**
10. Mineral Area College (Quarry Pond)**;**
11. Overland (Wild Acres Park Lake)**;**
12. Potosi (Roger Bilderback Lake)**;**
13. St. Charles (Fountain Lakes Pond, Kluesner Lake, Moore Lake, Skate Park Lake)**;**
14. St. Louis City (Benton Park Lake, Carondelet Park-Boathouse Lake, Fairgrounds Park Lake, Horseshoe Lake, Hyde Park Lake, Jefferson Lake, Lafayette Park Lake, North Riverfront Park Lake, O'Fallon Park Lake, Willmore Park-North Lake, Willmore Park-South Lake)**;**
15. St. Louis County (Bee Tree **Park** Lake, *[Bellefontaine Park Lake,]* **Blackjack Lake, Carp Lake,** Creve Coeur **Park** Lake, **Fountain Lake, Island Lake,** Jarville Lake, Simpson Lake, Spanish Lake, Sunfish Lake, *[Suson Park Lakes Nos. 1, 2, and 3,]* Tilles Park Lake*[, Veteran's Memorial Park Lake]*)**;**
16. Sedalia (Clover Dell Park Lake, Liberty Park Pond)**;**
17. Sedalia Water Department (Spring Fork Lake)**;**
18. Warrensburg (Lion's Lake)**;**
19. Watershed Committee of the Ozarks (Valley Water Mill Lake)**;**
20. Wentzville (Community Club Lake)**; and**
21. Windsor (Farrington Park Lake)**.**

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed March 7, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.125 Hunting and Trapping. The commission proposes to amend paragraph (1)(B)30. of this rule.

PURPOSE: This amendment changes names for consistency of six (6) lakes located in St. Louis County under cooperative management agreement with the department.

(1) Hunting, under statewide permits, seasons, methods, and limits, is permitted except as further restricted in this chapter and except for deer and turkey hunting as authorized in the annual *Fall Deer & Turkey Hunting Regulations and Information* booklet published in August and annual *Spring Turkey Hunting Information* booklet published in March, which are incorporated in this *Code* by reference. A printed copy of these booklets can be obtained from the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180 and are also available online at www.missouriconservation.org. This rule does not incorporate any subsequent amendments or additions.

(B) Hunting is prohibited on the following areas:

1. Thomas S. Baskett Wildlife Research and Education Center**;**
2. Bethany (Old Bethany City Reservoir)**;**
3. Buchanan County (Gasper Landing)**;**
4. California (Proctor Park Lake)**;**
5. Carthage (Kellogg Lake)**;**
6. Columbia (Antimi Lake, Cosmo-Bethel Lake, Lake of the Woods, Twin Lake)**;**
7. Dexter City Lake**;**
8. Farmington (Giessing Lake, Hager Lake, Thomas Lake)**;**
9. Fenton (Preslar Lake, Upper Fabick Lake, Westside Lake)**;**
10. Fulton (Morningside Lake, Truman Lake, Veterans Park Lake)**;**
11. Hamilton City Lake**;**
12. Harrisonville (North Lake)**;**
13. Jackson (Rotary Lake)**;**
14. Jackson County (Alex George Lake, Bergan Lake, Bowlin Road Lake, Fleming Pond, Lake Jacomo, Prairie Lee Lake, Scherer Lake, Tarsney Lake, Wood Lake, Wyatt Lake)**;**
15. James Foundation (Scioto Lake)**;**
16. Jamesport City Lake**;**
17. Kirksville (Spur Pond)**;**
18. Lawson City Lake**;**
19. Liberty (Fountain Bluff Park Ponds Nos. 1, 2, 3, 4, 5, 6, 7, and 8)**;**
20. Macon County (Fairgrounds Lake)**;**
21. Mexico (Lakeview Lake, Kiwanis Lake)**;**
22. Mineral Area College (Quarry Pond)**;**
23. Moberly (Rothwell Park Lake, Water Works Lake)**;**
24. Mount Vernon (Williams Creek Park Lake)**;**
25. Odessa (Lake Venita)**;**
26. Overland (Wild Acres Park Lake)**;**
27. Potosi (Roger Bilderback Lake)**;**
28. Rolla (Schuman Park Lake)**;**
29. St. Charles (Fountain Lakes Pond, Kluesner Lake, Moore Lake, Skate Park Lake)**;**
30. St. Louis County (Bee Tree **Park** Lake, **Blackjack Lake, Carp Lake,** Creve Coeur **Park** Lake, **Fountain Lake, Island Lake,** Jarville Lake, Simpson Lake, Spanish Lake, Sunfish Lake)**;**
31. Savannah City Lake**;**
32. Sedalia (Clover Dell Park Lake)**;**
33. Sedalia Water Department (Spring Fork Lake)**;**
34. Springfield City Utilities (Lake Springfield)**;**
35. Warrensburg (Lion's Lake)**;**
36. Watershed Committee of the Ozarks (Valley Water Mill Lake)**; and**
37. Windsor (Farrington Park Lake)**.**

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the **Code of State Regulations**. Amended: Filed March 7, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.135 Fishing, Methods. The commission proposes to amend subsections (3)(I) and (9)(H) of this rule.

PURPOSE: This amendment changes names for consistency of six (6) St. Louis County lakes under cooperative management agreement with the department.

(3) Gizzard shad may be taken from lakes and ponds by dip net or throw net, except at the following areas:

(I) St. Louis County (Bee Tree **Park** Lake, *[Bellefontaine Park Lake,]* **Blackjack Lake, Carp Lake,** Creve Coeur **Park** Lake, **Fountain Lake, Island Lake,** Jarville Lake, Simpson Lake, Spanish Lake, Sunfish Lake, *[Suson Park Lakes Nos. 1, 2, and 3,]* Tilles Park Lake*[, Veteran's Memorial Park Lake]*)

(9) From November 1 through January 31, not more than one (1) pole and line may be used by one (1) person at any time and the use of natural or scented baits as chum is prohibited on the following lakes:

(H) St. Louis County (*[Suson Park Lakes Nos. 1, 2, and 3,]* **Carp Lake, Island Lake,** Tilles Park Lake)

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116.

*Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the **Code of State Regulations**. Amended: Filed March 7, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.140 Fishing, Daily and Possession Limits. The commission proposes to amend subsections (2)(Y), (5)(F), (8)(L), and (10)(D) of this rule.

PURPOSE: This amendment changes names for consistency of six (6) St. Louis County lakes under cooperative management agreement with the department.

(2) The daily limit for black bass is two (2) on the following lakes:

(Y) St. Louis County (Bee Tree **Park** Lake, *[Bellefontaine Park Lake,]* **Blackjack Lake, Carp Lake,** Creve Coeur **Park** Lake, **Fountain Lake, Island Lake,** Jarville Lake, Simpson Lake, Spanish Lake, Sunfish Lake, *[Suson Park Lakes Nos. 1, 2, and 3,]* Tilles Park Lake*[, Veteran's Memorial Park Lake]*)

(5) The daily limit for crappie is fifteen (15) on the following lakes:

(F) St. Louis County (Bee Tree **Park** Lake, *[Bellefontaine Park Lake,]* **Blackjack Lake, Carp Lake,** Creve Coeur **Park** Lake, **Fountain Lake, Island Lake,** Jarville Lake, Simpson Lake, Spanish Lake, Sunfish Lake, *[Suson Park Lakes Nos. 1, 2, and 3,]* Tilles Park Lake*[, Veteran's Memorial Park Lake]*)

(8) The daily limit for fish other than those species listed as endangered in 3 CSR 10-4.111 or defined as game fish is twenty (20) in the aggregate, except on the following lakes where the daily limit is ten (10) in the aggregate, and except for those fish included in section (7) of this rule:

(L) St. Louis County (Bee Tree **Park** Lake, *[Bellefontaine Park Lake,]* **Blackjack Lake, Carp Lake,** Creve Coeur **Park** Lake, **Fountain Lake, Island Lake,** Jarville Lake, Simpson Lake, Spanish Lake, Sunfish Lake, *[Suson Park Lakes Nos. 1, 2, and 3,]* Tilles Park Lake*[, Veteran's Memorial Park Lake]*)

(10) No person shall continue to fish for any species after having four (4) trout in possession on the following lakes:

(D) St. Louis County (*[Suson Park Lakes Nos. 1, 2, and 3]* **Carp Lake, Island Lake**)

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the **Code of State Regulations**. Amended: Filed March 7, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.145 Fishing, Length Limits. The commission proposes to add paragraph (2)(A)13., renumber subsequent paragraphs, and amend paragraph (2)(B)11. and section (6) of this rule.

PURPOSE: This amendment changes names for consistency of six (6) lakes located in St. Louis County under cooperative management agreement with the department. It also establishes a fifteen-inch (15") minimum length limit on largemouth bass for several Farmington lakes (Hager, Giessing, and Thomas).

(2) Black bass more than twelve inches (12") but less than fifteen inches (15") total length must be returned to the water unharmed immediately after being caught, except as follows:

(A) Black bass less than fifteen inches (15") total length must be returned to the water unharmed immediately after being caught on the following lakes:

1. Arrow Rock State Historic Site (Big Soldier Lake);
2. Bethany (Old Bethany City Reservoir);
3. Blue Springs (Lake Remembrance);
4. Big Oak Tree State Park (Big Oak Lake);
5. Butler City Lake;
6. California (Proctor Park Lake);
7. Cameron (Reservoirs Nos. 1, 2, and 3, Grindstone Reservoir);
8. Carthage (Kellogg Lake);
9. Columbia (Stephens Lake);
10. Concordia (Edwin A. Pape Lake);
11. Confederate Memorial State Historic Site lakes;
12. Dexter City Lake;
13. Farmington (Hager Lake, Giessing Lake, Thomas Lake);
*[13.]***14.** Hamilton City Lake;
*[14.]***15.** Harrison County Lake;
*[15.]***16.** Higginsville City Lake;
*[16.]***17.** Holden City Lake;
*[17.]***18.** Iron Mountain City Lake;
*[18.]***19.** Jackson (Litz Park Lake, Rotary Lake);
*[19.]***20.** Jackson County (Alex George Lake, Bergan Lake, Bowlin Road Lake, Lake Jacomo, Prairie Lee Lake, Scherer Lake, Tarsney Lake, Wood Lake, Wyatt Lake);
*[20.]***21.** Jefferson City (McKay Park Lake);
*[21.]***22.** Keytesville (Maxwell Taylor Park Pond);
*[22.]***23.** Kirksville (Hazel Creek Lake);

*[23.]***24.** Liberty (Fountain Bluff Park Ponds Nos. 1, 2, 3, 4, 5, 6, 7, and 8)**;**

*[24.]***25.** Maysville (Willow Brook Lake)**;**

*[25.]***26.** Mark Twain National Forest (Fourche Lake, Huzzah Pond, Loggers Lake, McCormack Lake, Noblett Lake, Roby Lake)**;**

*[26.]***27.** Mineral Area College (Quarry Pond)**;**

*[27.]***28.** Odessa (Lake Venita)**;**

*[28.]***29.** Pershing State Park ponds**;**

*[29.]***30.** Potosi (Roger Bilderback Lake)**;**

*[30.]***31.** Unionville (Lake Mahoney)**;**

*[31.]***32.** University of Missouri (Dairy Farm Lake No. 1, McCredie Lake)**;**

*[32.]***33.** Warrensburg (Lion's Lake)**;**

*[33.]***34.** Watkins Mill State Park Lake**; and**

*[34.]***35.** Windsor (Farrington Park Lake)**;**

(B) Black bass less than eighteen inches (18") total length must be returned to the water unharmed immediately after being caught on the following lakes:

1. Ballwin (New Ballwin Lake, Vlasis Park Lake)**;**
2. Columbia (Twin Lake)**;**
3. Fenton (Preslar Lake, Upper Fabick Lake, Westside Lake)**;**
4. Ferguson (January-Wabash Lake)**;**
5. Jennings (Koeneman Park Lake)**;**
6. Kirkwood (Walker Lake)**;**
7. Overland (Wild Acres Park Lake)**;**
8. Sedalia Water Department (Spring Fork Lake)**;**
9. St. Charles (Fountain Lakes Pond, Kluesner Lake, Moore Lake, Skate Park Lake)**;**
10. St. Louis City (Benton Park Lake, Boathouse Lake, Fairgrounds Park Lake, Horseshoe Lake, Hyde Park Lake, Jefferson Lake, Lafayette Park Lake, North Riverfront Park Lake, O'Fallon Park Lake, Willmore Park-North Lake, Willmore Park-South Lake)**;**
11. St. Louis County (Bee Tree **Park** Lake, *[Bellefontaine Park Lake,]* **Blackjack Lake, Carp Lake,** Creve Coeur **Park** Lake, **Fountain Lake, Island Lake,** Jarville Lake, Simpson Lake, Spanish Lake, Sunfish Lake, *[Suson Park Lakes Nos. 1, 2, and 3]*, Tilles Park Lake*[, Veteran's Memorial Park Lake]*)**;**
12. University of Missouri (South Farm R-1 Lake)**; and**
13. Wentzville (Community Club Lake)**;**

(C) Black bass less than twenty inches (20") total length must be returned to the water unharmed immediately after being caught on Mexico (Teal Lake)*[.]***;**

(6) Flathead catfish less than twenty-four inches (24") total length must be returned to the water unharmed immediately after being caught on **Concordia (Edwin A. Pape Lake), Higginsville City Lake, and** St. Louis County (Bee Tree **Park** Lake, Sunfish Lake).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed March 7, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 20—Wildlife Code: Definitions

PROPOSED AMENDMENT

3 CSR 10-20.805 Definitions. The commission proposes to amend subsection (27)(G) of this rule.

PURPOSE: This amendment adds brook trout to the list of game fish commonly known as salmon, char, and trout.

(27) Game fish: Shall include the following in which the common names are to be interpreted as descriptive of, but not limiting, the classification by Latin names:

(G) *Oncorynchus****, Salvelinus,*** *and Salmo*, all species commonly known as salmon**, char,** and trout.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-11.805. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed March 7, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.010 Definitions. The commission is amending sections (5), (6), (8), (13), and (15), adding new section (21), deleting sections (9) and (17), and renumbering subsequent sections.

PURPOSE: This amendment adds the definition of "staff counsel" and changes the definition of "commission staff" and "general counsel" to better define those terms and to incorporate changes to the commission's organizational structure. The amendment also deletes the definitions of "highly confidential information" and "proprietary information" because those definitions are more clearly defined elsewhere in this chapter. The definition of "pleading" and "presiding officer" are also revised to make them more inclusive.

(5) Commission staff means all personnel employed by the commission whether on a permanent or contractual basis *[who are not attorneys in the general counsel's office, who are not members of the commission's research department, or who are*

not law judges.] **except commissioners; commissioner support staff, including technical advisory staff; personnel in the secretary's office; and personnel in the general counsel's office, including personnel in the adjudication department. Employees in the staff counsel's office are members of the commission staff.**

(6) Complainant means the commission, any person, corporation, municipality, political subdivision, the Office of the Public Counsel, the commission staff through the *[general]* **staff** counsel**'s office**, or public utility who files a complaint with the commission.

(8) General counsel means the attorney who serves as counsel to the commission and includes the general counsel and all other attorneys who serve in the office of the general counsel **but does not include attorneys employed in the staff counsel's office. The general counsel appears for the commission and performs all duties and services as attorney and counsel to the commission which the commission may reasonably require**.

[(9) Highly confidential information may include material or documents relating directly to specific customers; employee-sensitive information; marketing analyses or other market-specific information relating to services offered in competition with others; reports, work papers or other documentation related to work produced by internal or external auditors or consultants; strategies employed, or to be employed, or under consideration in contract negotiations.]

*[(10)]***(9)** Oath means attestation by a person signifying that he or she is bound in conscience and by the laws regarding perjury, either by swearing or affirmation to tell the truth.

*[(11)]***(10)** Party includes any applicant, complainant, petitioner, respondent, intervenor**,** or public utility in proceedings before the commission. Commission staff and the public counsel are also parties unless they file a notice of their intention not to participate within the period of time established for interventions by commission rule or order.

*[(12)]***(11)** Person includes a natural person, corporation, municipality, political subdivision, state or federal agency, and a partnership.

*[(13)]***(12)** Pleading means any *[application, complaint, petition, answer, motion, staff recommendation, or other similar written document, which is not a tariff or correspondence, and which is filed in a case. A brief is not a pleading under this definition]* **written document, including any exhibits or other attachments, filed with the commission that seeks a specific action or remedy, except that briefs and tariffs are not pleadings under this definition**.

*[(14)]***(13)** Political subdivision means any township, city, town, village, and any school, road, drainage, sewer**,** and levee district, or any other public subdivision, public corporation**,** or public quasi-corporation having the power to tax.

*[(15)]***(14)** Presiding officer means a commissioner, or a law judge licensed to practice law in the state of Missouri and appointed by the commission to preside over a case **or any portion of a case**.

*[(16)]***(15)** Public counsel means the Office of the Public Counsel as created by the Omnibus State Reorganization Act of 1974*[,]* and includes the assistants who represent the public before the commission.

[(17) Proprietary information may include trade secrets, as well as confidential or private technical, financial and business information.]

*[(18)]***(16)** Public utility includes every pipeline corporation, gas corporation, electrical corporation, telecommunications corporation, water corporation, heat or refrigeration corporation, sewer corporation, any joint municipal utility commission pursuant to section 386.020, RSMo**,** which is regulated by the commission, or any other entity described by statute as a public utility which is to be regulated by the commission.

*[(19)]***(17)** Respondent means any person as defined herein or public utility subject to regulation by the commission against whom any complaint is filed.

*[(20)]***(18)** Rule means all of these rules as a whole or the individual rule in which the word appears, whichever interpretation is consistent with the rational application of this chapter.

*[(21)]***(19)** Settlement officer means a presiding officer who has been delegated to facilitate the settlement of a case.

*[(22)]***(20)** Schedule means any attachment, table, supplement, list, output, or any other document affixed to an exhibit.

(21) Staff counsel means any attorney employed to represent the staff of the commission in proceedings before the commission. For administrative purposes only, the staff counsel's office is considered part of the general counsel's office and the chief staff counsel reports to the general counsel. However, the staff counsel's office performs its advocacy functions independently, under the direction of the chief staff counsel in consultation with the executive director and the directors of the operations and utility services divisions.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed March 2, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED RULE

4 CSR 240-2.025 Commission Address and Business Hours

PURPOSE: This rule provides the physical and mailing address, as well as the hours of business for the Public Service Commission.

(1) The Public Service Commission's principal office is located in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

(2) The public may obtain information, make requests, or make submissions by mail addressed to the Secretary of the Commission, Missouri Public Service Commission, PO Box 360, Jefferson City, MO 65102, electronically at the commission's Internet website, or in person at the commission's principal office during regular business hours.

(3) The regular business hours of the Missouri Public Service Commission are Monday through Friday, 8:00 a.m. to 5:00 p.m., except on state holidays when the offices are closed.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed March 2, 2011.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed rule is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.030 Records of the Commission. The commission is amending sections (1) and (2) and adding new sections (3), (4), and (5).

PURPOSE: Section (1) is amended for consistency, and section (2) is amended and sections (3), (4), and (5) are added to make fees for copies of public records comply with section 610.026, RSMo.

(1) The secretary of the commission shall keep a full and true record of all the proceedings of the commission, of all books, maps, documents**,** and papers ordered filed by the commission, of all orders made by each of the commissioners, and of all orders made by the commission or approved and confirmed by it and ordered filed. In addition, the secretary of the commission shall maintain a docket of all cases filed and cases set for hearing and shall assign each matter an appropriate case number. These records shall be available for public inspection in the office of the secretary of the commission, during *[reasonable]* **regular** business hours, Monday through Friday, except for legal holidays. The specific hours the records are available shall be posted at the principal office of the commission.

(2) Copies of **public** records*[, official documents, pleadings, transcripts, briefs, and orders filed with the commission]* may be requested from the secretary of the commission. Any such request shall be made in writing. *[Copies of records, official documents, pleadings, transcripts, briefs, and orders furnished to public officers for use in their official capacity may be provided without charge. Copies shall be provided to all others as follows:*

(A) Records, official documents, pleadings, briefs, and orders, thirty-five cents (35¢) per page;

(B) Certificate under seal, one dollar ($1);

(C) Transmittal by facsimile device, fifty cents (50¢) per page;

(D) Copies of official transcripts, fifty cents (50¢) per page. A diskette shall be provided upon request with a request for a printed copy of the transcript.]

(3) The fees for copying public records shall not exceed ten cents ($.10) per page for a paper copy not larger than nine inches by fourteen inches (9" × 14"), with the hourly fee for duplicating time not to exceed the average hourly rate of pay for the clerical staff of the commission fulfilling the request and the actual cost of research time. The commission shall utilize employees to make copies and conduct the research so that the lowest amount of charges are incurred based on the scope of the request.

(4) Fees for providing access to public records maintained on computer facilities, recording tapes or disks, videotapes or films, pictures, maps, slides, graphics, illustrations, or similar audio or visual items or devices, and for paper copies larger than nine inches by fourteen inches (9" × 14") shall include only the cost of copies, staff time, which shall not exceed the average hourly rate of pay for staff of the public governmental body required for making copies and programming, if necessary, and the cost of the disk, tape, or other medium used for the duplication. Fees for maps, blueprints, or plats that require special expertise to duplicate may include the actual rate of compensation for the trained personnel required to duplicate such maps, blueprints, or plats. If programming is required beyond the customary and usual level to comply with a request from records or information, the fees for compliance may include the actual costs of such programming.

(5) Copies may be provided without charge or at a reduced charge to public officers for use in their official capacity, or in any other situation where the Public Service Commission determines that waiver or reduction of the fee is in the public interest

because it is likely to contribute significantly to public understanding of the operations or activities of the Public Service Commission and is not primarily in the commercial interest of the requester.

*AUTHORITY: sections 386.300 and 386.410, RSMo [Supp. 1998] **2000**. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Amended: Filed July 26, 1999, effective Jan. 30, 2000. Amended: Filed March 2, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment is estimated to cost private entities one hundred fifty dollars ($150) in the aggregate per year for each year the rule is effective.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

FISCAL NOTE
PRIVATE COST

I. Department Title: Title 4 -- Department of Economic Development
Division Title: Division 240 – Public Service Commission
Chapter Title: Chapter 2 – Practice and Procedure

Rule Number and Title:	4 CSR 240-2.030 Records of the Commission
Type of Rulemaking:	Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
11	Individuals, Small Law Firms or Associations	**$100 per year**
2	Large Law Firms	**$50 per year**

III. WORKSHEET

$100 + $50 = $150 per year each year for the life of the rule

IV. ASSUMPTIONS

- The Commission assumes that is will have the same number of records requests by the same types of entities or individuals for each year for the life of the rule as it had in FY2010.
- The Commission assumes that the rule will exist indefinitely and at a minimum five years.
- In FY 2010 the Commission charged the same amounts as under Section 610.026, RSMo, which it will also charge for the life of the rule.
- In FY 2010 the Commission charged approximately $50 to large law firms (100 or more employees) for records requests.
- In FY 2010 the Commission charged approximately $100 to individuals and small law firms or associations (less than 100 employees).

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.040 Practice Before the Commission. The commission is amending sections (1), (3), and (4).

PURPOSE: Section (1) is being amended to reflect the new organizational structure of the commission distinguishing "staff counsel" from the "general counsel." Section (3) is amended to clarify that a visiting attorney must provide proof of compliance with Supreme Court Rule 6.01(m). Section (4) is being amended to allow a Rule 13 certified law student to appear before the commission without petitioning the commission.

(1) The *[general]* **staff** counsel represents the **commission** staff in investigations, contested cases**,** and other proceedings *[and appears for the commission in all courts and before federal regulatory bodies; and in general performs all duties and services as attorney and counsel to the commission which the commission may reasonably require]* **before the commission**.

(3) Attorneys who wish to practice before the commission shall fully comply with its rules and also comply with one (1) of the following criteria:

(C) Any attorney who is not a member of the Missouri Bar, but who is a member in good standing of the bar of any court of record**,** may petition the commission for leave to be permitted to appear and participate in a particular case under all of the following conditions:

1. The visiting attorney shall file in a separate pleading a statement identifying each court of which that attorney is a member and certifying that neither the visiting attorney nor any member of the attorney's firm is disqualified to appear in any of these courts;

2. The statement shall designate some member in good standing of the Missouri Bar having an office within Missouri as associate counsel; *[and]*

3. The designated Missouri attorney shall simultaneously enter an appearance as an attorney of record*[.]***; and**

4. The visiting attorney shall provide a receipt or a statement showing that he or she has complied with the requirement of Missouri Supreme Court Rule 6.01(m).

(4) An eligible law student **certified under Missouri Supreme Court Rule 13** may *[petition the commission to be allowed to]* appear **before the commission as an attorney**. Such application must comply with any applicable rules or statutes.

AUTHORITY: section 386.410, RSMo [Supp. 1998] 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED RESCISSION

4 CSR 240-2.045 Electronic Filing. This rule prescribed the procedure for electronic filing before the commission.

PURPOSE: This rule is being rescinded because electronic filing has been used for more than five (5) years at the commission and practitioners and the public are generally familiar with the process, thus a separate rule is no longer necessary. In addition, electronic filing is authorized elsewhere in this chapter and, therefore, this rule is redundant.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 7, 2001, effective May 30, 2002. Rescinded: Filed March 2, 2011.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rescission with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed rescission is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rescission and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.050 Computation of Time. The commission is amending sections (2) and (3).

PURPOSE: Section (2) is amended to clarify the effective date and time of commission orders. Section (3) is amended to change the standard required to get an extension of time from "where the failure to act was the result of excusable neglect" to "for good cause shown."

(2) **Except when the issuance and effective date are the same,** *[I]*in computing the effective date of any order of the commission, the day the order was issued shall not be included, and the order is considered effective at *[12:01]* **12:00** a.m. on the effective date designated in the order, whether or not the date is a Saturday, Sunday**,** or legal holiday. **If the effective date and the issuance date are the same, the order shall be effective at the date and time the order is issued by the commission.**

(3) When an act is required or allowed to be done by order or rule of the commission at or within a specified time, the commission*[, at its discretion,]* may—

(B) After the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect **or for other good cause shown**.

AUTHORITY: section 386.410, RSMo [Supp. 1998] 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.060 Applications. The commission is amending sections (1), (3), and (5).

PURPOSE: Subsection (1)(J) is being amended to clarify that incorporated associations or entities created by statute do not have to file a list of members. Section (3) is being amended to change the term "purchaser" to "a necessary party to a transaction" because the entities governed by the rule are not always involved in a sale or purchase. Section (5) is being amended to exempt telecommunications companies and interconnected voice over Internet protocol (IVoIP) companies from having to seek commission approval for name changes under this rule.

(1) All applications shall comply with the requirements of these rules and shall include the following information:

(J) If any applicant is an association, **other than an incorporated association or other entity created by statute,** a list of all of its members;

(3) If *[the purchaser]* **a necessary party to a transaction for which approval is sought** under the provisions of 4 CSR 240-3.110, 4 CSR 240-3.115, 4 CSR 240-3.210, 4 CSR 240-3.215, 4 CSR 240-3.310, 4 CSR 240-3.315, 4 CSR 240-3.405, 4 CSR 240-3.410, 4 CSR 240-3.520, 4 CSR 240-3.525, 4 CSR 240-3.605**,** or 4 CSR 240-3.610 is not subject to the jurisdiction of the commission, but will be subject to the commission's jurisdiction after the *[sale, the purchaser]* **transaction, the necessary party** must comply with these rules.

(5) *[A]* **Except for telecommunications companies and providers of video services or interconnected voice over Internet protocol (IVoIP) services, a** name change may be accomplished by filing the items below with a cover letter requesting a change of name. Notwithstanding any other provision of these rules, the items required herein may be filed by a nonattorney. Applications for approval of a change of name shall include:

AUTHORITY: sections 386.250 and 386.410, RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. For intervening history, please consult the ***Code of Stat Regulations****. Amended: Filed March 2, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street,

Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED RULE

4 CSR 240-2.062 Required Notices for Telecommunications Companies and IVoIP or Video Service Providers

PURPOSE: This rule reflects the change in section 392.420, RSMo, which provides that the Public Service Commission no longer has the authority to apply or enforce the provisions of sections 392.270 through 392.340, RSMo, in certain instances. Specifically, the commission will no longer approve name changes or company reorganizations for telecommunications companies. The proposed rule replaces the application processes with notice requirements and specifies how video and interconnected voice over Internet protocol (IVoIP) service providers should notify the commission of name changes.

(1) A telecommunications company that changes its name shall submit a letter to the commission notifying it of the change of name. The notice shall include:

(A) A statement, clearly setting out both the old name and the new name;

(B) Evidence of registration of the name change with the Missouri secretary of state;

(C) A copy of the notice sent to customers to inform them of the name change at or before the next billing cycle after any name change; and

(D) An adoption notice and revised tariff title sheet reflecting the new name, to be effective ten (10) days after the filing thereof. The adoption notice shall be substantially as follows: "The (name of telecommunications company) hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed by it, all tariffs filed with the Public Service Commission, State of Missouri, by the (name of telecommunications company) prior to (date)."

(2) A telecommunications company that reorganizes through a merger, asset sale, etc., shall submit a letter to the commission that describes the mechanics of the reorganization, as well as the following:

(A) If the company changes its name or adopts a fictitious name, all of the information required in section (1) above;

(B) A request to cancel any certificates or tariffs that will no longer be used (if applicable); and

(C) A statement that the company has reviewed its contacts in the commission's electronic filing and information system (EFIS) and that they have been updated to reflect the reorganization.

(3) A provider of video service or interconnected voice over Internet protocol (IVoIP) service that changes its name shall notify the commission of that change. Notice may be made by one (1) of the following methods:

(A) Sending a letter to the commission as set forth in section (1) above;

(B) Submitting a Notice of Change Form; or

(C) Submitting a revised Application Form.

(4) Notwithstanding any other provision of Chapter 2 and Chapter 3 of these rules, items required by this rule may be submitted by a nonattorney.

AUTHORITY: sections 386.250 and 386.410, RSMo 2000 and section 392.420, RSMo Supp. 2010. Original rule filed March 2, 2011.

PUBLIC COST: This proposed rule is estimated to cost state agencies or political subdivisions one thousand five hundred thirty-one dollars and thirty-three cents ($1,531.33) per year for the life of the rule.

PRIVATE COST: This proposed rule is estimated to cost private entities more than nine thousand two hundred fifty dollars ($9,250) per year for the life of the rule.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed rule is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

FISCAL NOTE
PUBLIC COST

I. Department Title: Title 4 -- Department of Economic Development
Division Title: Division 240 – Public Service Commission
Chapter Title: Chapter 2 – Practice and Procedure

Rule Number and Name:	4 CSR 240-2.062 Required Notices for Telecommunications Companies and IVoIP or Video Service Providers
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Public Service Commission	**$1531.33 per year for the life of the rule**

III. WORKSHEET

3 paper telecommunications name changes X ($10.31 + $76.27 + $17.19) = $311.31
9 electronic telecommunications name changes X ($76.27 + $17.19) = $841.14
3 electronic telecommunications "mergers" X ($76.27 + $17.19) = $280.38
10 video or IVoIP name changes X $9.85 = $98.50
Total per year cost to the Commission $1531.33 per year

IV. ASSUMPTIONS

- **Twelve (12) telecommunications name changes were filed in FY 2009. Three (3) of these were submitted into the system by the Commission's Data Center personnel and nine (9) were submitted electronically into the Commission's Electronic Filing and Information System (EFIS).**
- **Three (3) telecommunications merger or reorganizations were filed in FY 2009.**
- **The number of telecommunications filings for name changes and reorganizations will remain the same each year for the life of the rule.**
- **If a paper telecommunications company filing is made and the Data Center must submit it into EFIS, it requires approximately forty-five (45) minutes of Data Center personnel time at $13.75 per hour personnel expense to the**

commission ($10.31). In addition, commission telecommunications department staff and legal staff spend the following amount of time per name change or merger: Telecommunications Analyst II, 2.5 hours at $18.61 per hour; Rate & Tariff Examiner Supervisor, 15 minutes at $29.00 per hour; Senior Counsel, .5 hour at $35.13 per hour; and Legal Secretary, 15 minutes at $19.70 per hour ($76.27 total other personnel cost).

- **In addition, telecommunications name changes or mergers require additional Data Center processing costs even if filed electronically. This cost is estimated at $17.19 (1.25 hours at $13.75 per hour).**

- **The Data Center spends approximately $6.88 (.5 hours at a personnel cost of $13.75 per hour) to the Commission on a video or IVoIP service provider name change. Other commission personnel cost is approximately $14.59 (.5 hours at an average pay of $29.17 per hour).**

- **The number of VoIP name changes is estimated to be no more than ten (10) per year based on past experience which was not tracked.**

- **To process a video or IVoIP name change is expected to cost the Commission $9.85 (.5 hours of commission personnel time at a cost of $19.70 per hour).**

- **The life of the rule is unknown but is expected to be at least five years.**

- **The Commission would have experienced a greater cost in personnel time under the previous rule 4CSR 240-2.060, from which the telecommunications company portions of this rule was removed and promulgated as a new rule. In addition, the Commission will save personnel time having an accurate record of video and IVoIP providers because of its statutory duty to track these companies.**

FISCAL NOTE
PRIVATE COST

I. Department Title: Title 4 -- Department of Economic Development
Division Title: Division 240 – Public Service Commission
Chapter Title: Chapter 2 – Practice and Procedure

Rule Number and Title:	4 CSR 240-2.062 Required Notices for Telecommunications Companies and IVoIP or Video Service Providers
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Telecommunications Companies	**15**	**$8250 per year for the life of the rule**
Video Service Providers	**5**	**$500 per year for the life of the rule**
IVoIP service Providers	**5**	**$500 per year for the life of the rule**

III. WORKSHEET

3 telecommunications merger notices X $750 = $2250
12 telecommunications name change notices X $500 = $6,000
10 IVoIP name change notices X $100 = $1000
Total company costs $9250 per year for the life of the rule

IV. ASSUMPTIONS

- **Twelve (12) telecommunications name changes were filed in FY 2009. Three (3) of these were submitted into the system by the Commission's Data Center personnel and nine (9) were submitted electronically into the Commission's Electronic Filing and Information System (EFIS).**
- **Three (3) telecommunications merger or reorganizations were filed in FY 2009.**
- **All the merger and reorganization notices for telecommunications companies will be filed by an attorney. Attorney fees for such filings will cost on average $750.**

- **All of the name change notices for telecommunications companies will be made by nonattorneys or if made by attorneys will cost no more than an average of $500 per filing.**

- **The number of telecommunications filings for name changes and reorganizations will remain the same each year for the life of the rule.**

- **The number of IVoIP name changes is estimated to be no more than ten (10) per year based on past experience which was not tracked.**

- **The IVoIP name change notices will be filed by nonattorneys at a cost of under $100 to the company to compose a letter and mail or submit it electronically to the Commission.**

- **The life of the rule is unknown but is expected to be at least five years.**

- **Telecommunications companies were already complying with more stringent and more cumbersome requirements under 4 CSR 240-2.060 from which these provisions have been moved, thus it is believed that sections (1) and (2) of the rule require no new costs from those companies.**

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.065 Tariff Filings Which Create Cases. The commission is adding a new section (4) and renumbering and amending sections (4) and (5).

PURPOSE: This rule is being amended to give notice to practitioners before the commission of the procedure for handling tariff filings now allowed under statute. The rule is also being amended to remove the requirement of providing eight (8) paper copies of tariffs in addition to the original.

(4) A case file shall be established for a tariff filing in which the commission is required by law or requested by the party filing the tariff to specifically approve the tariff.

*[(4)]***(5)** A case **file** will not be established to consider tariff sheets submitted by a regulated utility which do not meet the circumstances of sections (1)–*[(3)]***(4)** of this rule, except that a case **file** shall be established when tariff sheets are suspended by the commission on its own motion or*[,]* when suspended*[,]* upon the recommendation of staff.

*[(5)]***(6)** When a public utility extends the effective date of a tariff, it shall file *[one (1) original, and eight (8) copies of]* a letter extending the tariff effective date in the official case file. Notwithstanding any other provision of these rules, this letter may be filed by a nonattorney.

AUTHORITY: section 386.410, RSMo [Supp. 1998] 2000. Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.070 Complaints. The commission is amending section (1), adding new sections (2) and (5), amending and renumbering sections (2), (3), (7), (10), (11), and (14), deleting section (5), and renumbering the remaining sections.

PURPOSE: Section (1) is being amended to reflect the current organizational structure of the commission and to clarify the language. Section (2) is being amended to clarify that an informal complaint does not have to be filed before a formal complaint may be filed but that the presiding officer may require it, to point complainants to other relevant sections of the rules, and to remove an incorrect phone number for the hearing impaired. The remaining changes to the rule are to reorganize its provisions for clarity.

(1) *[The commission on its own motion, the commission staff through the general counsel, the office of the public counsel, or a]***A**ny person or public utility who feels aggrieved by a**n alleged** violation of any statute, rule, order, or decision within the commission's jurisdiction may file a complaint. *[The aggrieved party, or complainant, has the option to file either an informal or a formal complaint.]* **A complaint may also be filed by the commission on its own motion, the commission staff through the staff counsel, or the office of the public counsel.**

(2) A person who feels aggrieved by an alleged violation of any statute, rule, order, or decision within the commission's jurisdiction may file an informal complaint with the commission's consumer services department or file either a formal complaint or small formal complaint with the commission. Filing an informal complaint is not a prerequisite to filing a formal or small formal complaint; however, the presiding officer may direct that a *pro se* complainant be required to go through the informal complaint procedure before the formal complaint will be heard by the commission. If an allegedly aggrieved person initially files an informal complaint and is not satisfied with the outcome, such person may also file a formal or small formal complaint.

*[(2)]***(3)** Informal Complaints. **The protections and processes of an informal complaint regarding service or billing practices are set out in 4 CSR 240-13.** To file an informal complaint, the complainant shall state, either in writing, by telephone (consumer services hotline 1-800-392-4211*[,]* or *[TDD hotline 1-800-829-7541]* **Relay Missouri at 711**), or in person at the commission's offices—

(A) The name, street address, and telephone number of each complainant and, if one (1) person asserts authority to act on behalf of the others, the source of that authority;

(B) The address where the utility service was rendered;

(C) The name and address of the party against whom the complaint is filed;

(D) The nature of the complaint*[,]* and the complainant's interest therein;

(E) The relief requested; and

(F) The measures taken by the complainant to resolve the complaint.

*[(3)]***(4)** Formal Complaints. *[If a complainant is not satisfied with the outcome of the informal complaint, a formal complaint may be filed.]* **A** *[F]***f**ormal complaint may be made by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person,

corporation, or public utility, in violation or claimed to be in violation of any provision of law or of any rule or order or decision of the commission. **The formal complaint shall contain the following information:**

(A) The name and street address of each complainant and, if different, the address where the subject utility service was rendered;

(B) The signature, telephone number, facsimile number, and email address of each complainant or their legal representative, where applicable;

(C) The name and address of the person, corporation, or public utility against whom the complaint is being filed;

(D) The nature of the complaint and the complainant's interest in the complaint, in a clear and concise manner;

(E) The relief requested;

(F) A statement as to whether the complainant has directly contacted the person, corporation, or public utility about which complaint is being made;

(G) The jurisdiction of the commission over the subject matter of the complaint; and

(H) If the complainant is an association, other than an incorporated association or other entity created by statute, a list of all its members.

(5) *[However, n]***N**o complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any public utility unless the complaint is signed by the public counsel, the mayor or the president or chairman of the board of aldermen or a majority of the council or other legislative body of any town, village, county**,** or other political subdivision, within which the alleged violation occurred, or not fewer than twenty-five (25) consumers or purchasers or prospective consumers or purchasers of public utility gas, electricity, water, sewer**,** or telephone service as provided by law. Any public utility has the right to file a formal complaint on any of the grounds upon which complaints are allowed to be filed by other persons and the same procedure shall be followed as in other cases.

*[(4)]***(6)** The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant.

[(5) The formal complaint shall contain the following information:

(A) The name, street address, signature, telephone number, facsimile number and electronic mail address, where applicable, of each complainant and, if different, the address where the subject utility service was rendered;

(B) The name and address of the person, corporation or public utility against whom the complaint is being filed;

(C) The nature of the complaint and the complainant's interest in the complaint, in a clear and concise manner;

(D) The relief requested;

(E) A statement as to whether the complainant has directly contacted the person, corporation or public utility about which complaint is being made;

(F) The jurisdiction of the commission over the subject matter of the complaint; and

(G) If the complainant is an association, a list of all its members.]

*[(6)]***(7)** The commission, on its own motion or on the motion of a party, may after notice dismiss a complaint for failure to state a claim on which relief may be granted or failure to comply with any provision of these rules or an order of the commission, or may strike irrelevant allegations.

*[(7)]***(8)** Upon the filing of a complaint in compliance with these rules, the secretary of the commission shall serve by certified mail, postage prepaid, a copy of the complaint upon the person, corporation**,** or public utility against whom the complaint has been filed, which shall be accompanied by a notice that the matter complained of be satisfied or that the complaint be answered by the respondent, unless otherwise ordered, within thirty (30) days of the date of the notice.

*[(8)]***(9)** The respondent shall file an answer to the complaint within the time provided. All grounds of defense, both of law and of fact, shall be raised in the answer. If the respondent has no information or belief upon the subject sufficient to enable the respondent to answer an allegation of the complaint, the respondent may so state in the answer and assert a denial upon that ground.

*[(9)]***(10)** If the respondent in a complaint case fails to file a timely answer, the complainant's averments may be deemed admitted and an order granting default entered. The respondent has seven (7) days from the issue date of the order granting default to file a motion to set aside the order of default and extend the filing date of the answer. The commission may grant the motion to set aside the order of default and grant the respondent additional time to answer if it finds good cause.

*[(10)]***(11)** The commission may order, at any time after the filing of a complaint, an investigation by its staff as to the cause of the complaint. The staff shall file a report of its findings with the commission and all parties to the complaint case. The investigative report shall not be made public unless released in accordance with section*[s]* 386.480, 392.210(2)**,** or 393.140(3), RSMo, or during the course of the hearing involving the complaint.

*[(11)]***(12)** When the commission determines that a hearing should be held, the commission shall fix the time and place of the hearing. The commission shall serve notice upon the affected person, corporation**,** or public utility not fewer than ten (10) days before the time set for the hearing, unless the commission finds the public necessity requires that the hearing be held at an earlier date.

*[(12)]***(13)** All matters upon which a complaint may be founded may be joined in one (1) hearing and no motion for dismissal shall be entertained against a complainant for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties.

*[(13)]***(14)** When an order is rendered disposing of a case, the regulatory law judge shall cause the parties to be notified that the order will be final unless an application for rehearing is filed within the allotted number of days and provide information regarding the rehearing and appeal process.

*[(14)]***(15)** Small Formal Complaint Case. If*[, after complying with the informal complaint process established by section (2) of this rule,]* a customer of a utility files a formal complaint regarding any dispute involving less than three thousand dollars ($3,000), the process set forth in this section shall be followed for such complaints. The provisions of sections (1)–*[(13)]***(14)** of this rule shall also apply to such complaints unless they directly conflict with the provisions of this section, in which case the provisions of this section shall apply.

(A) When a complaint is filed that qualifies for handling as a small formal complaint, the assigned regulatory law judge shall direct the secretary of the commission to serve, by certified mail, postage prepaid, a copy of the complaint upon the person, corporation, or public utility against whom the complaint has been filed. At the same time, the regulatory law judge shall notify all parties that the complaint will proceed under the small formal complaint process. The person, corporation, or public utility against whom the complaint has been filed is allowed thirty (30) days after the date of notice to satisfy the complaint or file an answer. If the person, corporation, or public utility

does not satisfy the complaint or file an answer within thirty (30) days, the regulatory law judge may issue an order granting default and deeming the allegations of the complaint to have been admitted by the respondent. A party in default has seven (7) days from the issue date of the order granting default to file a motion to set aside the order of default. The regulatory law judge may grant the motion to set aside the order of default and allow the respondent additional time to answer upon a showing of good cause.

(B) If any party believes that a complaint should or should not be handled as a small formal complaint, that party may file a motion with the commission requesting that the status of the complaint be changed. In response to such motion, or acting on its own motion, the commission shall, at its discretion, decide how the complaint shall be handled.

(C) Upon the filing of a complaint that qualifies under this section, the chief regulatory law judge shall assign the case to a regulatory law judge. To process small complaint cases in the timeliest manner and in the most convenient location for the customers, the commission hereby delegates the commission's authority to hear the case, make rulings, and issue a recommended report and order or other appropriate order disposing of the case to such regulatory law judge.

(D) The commission's staff shall, within forty-five (45) days after the complaint is filed, investigate the complaint and file a report detailing staff's findings and recommendations. The regulatory law judge may allow staff additional time to complete its investigation for good cause shown. The member or members of the commission's staff who investigate the complaint shall be available as a witness at the hearing if the regulatory law judge or any party wishes to call them to testify. Staff shall not advocate a position beyond reporting the results of its investigation. If staff believes it should advocate a position, it may file a motion to change the status of the complaint under subsection (B) of this section.

(E) Any hearing, unless otherwise agreed to by the parties, shall be held in the county, or a city not within a county, where the subject utility service was rendered or within thirty (30) miles of where the service was rendered. The regulatory law judge may allow any party, witness, or attorney to participate in the hearing by telephone.

(F) Small formal complaint case hearings shall be conducted in an informal summary manner whenever possible, without affecting the rights of the parties—

1. The technical rules of evidence shall not apply;

2. The regulatory law judge shall have the authority to dispense with pre-filed written testimony; and

3. The regulatory law judge shall assume an affirmative duty to determine the merits of the claims and defenses of the parties and may question parties and witnesses.

(G) The regulatory law judge, after affording the parties reasonable opportunity for discovery and a fair hearing, shall issue a recommended report and order within one hundred (100) days following the filing of the complaint, unless the regulatory law judge finds good cause to extend that time or the extension is otherwise agreed to by the parties.

(H) Any party subject to a recommended order disposing of the case or a recommended report and order issued by a regulatory law judge under this section may file with the commission, within ten (10) days of the issuance of the recommended order, comments supporting or opposing the recommended order. Any comments opposing the recommended order shall contain specific detailed grounds upon which it claims the order is unlawful, unjust, or unreasonable. The commission may approve or reject the recommended order based on the existing record without further hearing. If the commission rejects the recommended order, the commission shall issue its own order based on the evidence previously submitted, or upon such additional evidence, as the commission shall choose to receive.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed March 2, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.075 Intervention. The commission is amending sections (1) and (2), adding new sections (4), (5), (6), (7), (8), and (9), deleting section (3), and renumbering and amending sections (4), (5), and (6).

PURPOSE: Sections (1), (4), and (5) are being amended to change "application to intervene" to "motion to intervene," to avoid requiring applicants for intervention to file all the information required in an application, much of which is superfluous. Sections (2) and (3) are amended to include a complete list of the information that must be included in a motion to intervene and to clarify that incorporated associations or entities created by statute do not need to list their members. New section (4) clarifies that the commission may limit a prospective party's intervention to particular issues or interests in a given case. Section (6) is amended to clarify that any brief filed as an ***amicus curiae*** *must comply with all applicable briefing requirements. Changes and additions are also made to this rule in order to minimize confusion associated with an association appearing in different cases under the same name when the members are different in each case. Changes are also made to prevent unincorporated associations from changing its members without following the necessary rules for intervention.*

(1) *[An application]* **A motion** to intervene *[shall comply with these rules and]* **or add new member(s)** shall be filed within thirty (30) days after the commission issues its order giving notice of the case, unless otherwise ordered by the commission.

(2) *[An application to intervene shall state]* **A motion to intervene or add new member(s) shall include:**

(A) The legal name of each association, person, or entity seeking intervention or to be added;

(B) The street and mailing address of the principal office or place of business of each association, person, or entity seeking intervention or to be added, or of their attorney;

(C) The email address, fax number, and telephone number, if any, of each association, person, or entity seeking intervention or to be added, or their attorney;

(D) If any applicant is an association, other than an incorporated association or other entity created by statute, a list of all of its members;

(E) A statement of the proposed intervenor's **or new member's** interest in the case and reasons for seeking intervention*[,]* **or to be added;** and *[shall state]*

(F) A statement as to whether the proposed intervenor **or new member** supports or opposes the relief sought or that the proposed intervenor **or new member** is unsure of the position it will take.

[(3) An association filing an application to intervene shall list all of its members.]

*[(4)]***(3)** The commission may *[on application permit any person to intervene on a showing that]* **grant a motion to intervene or add new member(s) if**—

(A) The proposed intervenor **or new member(s)** has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest.

(4) If the commission grants intervention to an association, other than an incorporated association or other entity created by statute, the commission is not granting intervention to the "association," but is granting intervention to the individual members of the association.

(5) For purposes of 4 CSR 240-2.080(16), service upon counsel for an association satisfies the requirement for service upon the individual members of the association.

(6) If any member(s) of an association, other than an incorporated association or other entity created by statute, that is a party to any case before the commission withdraws from the association during the pendency of a case, the association must file a notice of the member's(s') withdrawal in the official case file within five (5) days of the member's(s') withdrawal.

(7) If an association, other than an incorporated association or other entity created by statute, that is a party to any case before the commission wants to add an additional member(s) during the pendency of that case, the association must file a motion to add new member(s).

(8) If the commission finds that the name of any association, other than an incorporated association or other entity created by statute, seeking intervention in a case before the commission could lead to confusion or misidentification of that association or its members, the commission may order that the association be identified by an alternate name in that case.

(9) The commission may limit an intervention to particular issues or interests in a case.

*[(5)]***(10)** *[Applications]* **Motions** to intervene **or add new member(s)** filed after the intervention date may be granted upon a showing of good cause. **Any motion so filed must include a definitive statement whether or not the entity seeking intervention or to be added as a new member accepts the record established in that case, including the requirements of any orders of the commission, as of the date the motion is filed.**

*[(6)]***(11)** Any person not a party to a case may petition the commission for leave to file a brief as an *amicus curiae*. The petition for leave must state the petitioner's interest in the matter and explain why an *amicus* brief is desirable and how the matters asserted are relevant to the determination of the case. The brief may be submitted simultaneously with the petition. Unless otherwise ordered by the commission, the brief must be filed no later than the initial briefs of the parties **and comply with all applicable briefing requirements**. If leave to file a brief as an *amicus curiae* is granted, the brief shall be deemed filed on the date submitted. An *amicus curiae* may not file a reply brief.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 26, 2002, effective Nov. 30, 2002. Amended: Filed March 2, 2011.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.080 Pleadings, Filing, and Service. The commission is amending section (1), adding new sections (2), (9), and (15), deleting sections (4), (6), (10), (11), and (18), and renumbering and amending the rest of the sections.

PURPOSE: A majority of the proposed amendments to this rule are to simply reorganize its current requirements and rewrite sentences for clarity. Section (3) is amended to require a statement of facts in pleadings. Sections (5) and (14) make the rejection of pleadings

discretionary instead of mandatory. Section (8) is amended to remove the requirement to file unnecessary paper copies. Section (11) is amended so that electronic filings are considered filed on the date they are electronically received and paper filings may be made during regular business hours of the commission. Section (12) allows the caption of a pleading to contain more than one (1) case caption. Renumbered sections (15) and (20) are amended to conform with the actual practice and the parties expectations that they have ten (10) days to respond to pleadings unless otherwise ordered. Section (21) is amended to remove overly detailed requirements for setting out issues for hearing that the parties often asked to be waived.

(1) Every pleading or brief shall be signed by *[at least one (1)]* **an** attorney of record with the attorney's individual name or, if a natural person is not represented by an attorney, shall be signed by the natural person.

(2) By signing a pleading, the signer represents that he or she is authorized to so act.

*[(2)]***(3)** *[Each p]***P**leading**s** or brief**s** shall *[state]* **include** the signer's address, *[Missouri]* **state** bar number**(s)**, e*[lectronic]*mail address, fax number**,** and telephone number, if any. *[If the attorney is not licensed in Missouri the signature shall be followed by the name of the state in which the attorney is licensed and any identifying number or nomenclature similarly used by the licensing state.]*

*[(3)]***(4)** Each pleading shall include a clear and concise statement of the relief requested**,** *[and]* **a** specific reference to the statutory provision or other authority under which relief is requested**, and a concise statement of the facts entitling the party to relief**.

[(4) Except when provided by rule or statute, pleadings or briefs need not be verified or accompanied by affidavit.]

(5) An unsigned pleading or brief *[shall]* **may** be rejected.

[(6) By signing a pleading, the signer represents that he or she is authorized to so act, and that the signer is a licensed attorney-at-law in good standing in Missouri or has complied with the rules below concerning any attorney who is not a Missouri attorney or is appearing on his or her own behalf.]

*[(7)]***(6)** By presenting or maintaining a claim, defense, request, demand, objection, contention, or argument in a pleading, motion, brief, or other document filed with or submitted to the commission, an attorney or party is certifying to the best of the signer's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that—

(A) The claim, defense, request, demand, objection, contention, or argument is not presented or maintained for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(B) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(C) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(D) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

*[(8)]***(7)** Any person filing a pleading or a brief shall file with the secretary of the commission either*[:]***—**

(A) *[One (1) paper]* **The** original *[and eight (8) paper copies of the pleading or brief]*; or

(B) An electronic copy *[of the pleading or brief as permitted elsewhere in these rules]*.

*[(9)]***(8)** Each pleading may be accompanied by a cover letter which states the subject matter. This cover letter shall contain no matter for commission decision.

[(10) The party filing a pleading or brief shall serve each other party a copy of the pleading or brief and cover letter. Any party may contact the secretary of the commission for the names and addresses of the parties in a case.]

[(11) The date of filing shall be the date the pleading or brief is stamped filed by the secretary of the commission. Pleadings or briefs received after 4:00 p.m. will be stamped filed the next day the commission is regularly open for business.]

(9) Any document's filing date shall be the date and time the document is physically or electronically stamped as filed by the secretary of the commission. Documents physically received in the commission's data center during regular business hours shall be stamped on the date received. Documents physically received in the commission's data center after regular business hours shall be stamped the next day that the commission has regular business hours. Documents submitted electronically to the commission's electronic information and filing system (EFIS) will be stamped filed by EFIS on the date and time the document is received in EFIS.

*[(12)]***(10)** Pleadings and briefs in every instance shall display on the cover or first page the case number and the title of the case. In the event the title of a case contains more than one (1) name as applicants, complainants**,** or respondents, it shall be sufficient to show only the first of these names as it appears in the first document commencing the case, followed by an appropriate abbreviation (et al.) indicating the existence of other parties. *[Unless a case is consolidated, pleadings or briefs shall be filed with only one (1) case number and title thereon.]*

*[(13)]***(11)** Pleadings and briefs that are not electronically filed shall be bound at the top or at an edge, shall be typewritten or printed upon white, eight and one-half by eleven-inch (8 1/2" × 11") paper. Attachments to pleadings or briefs shall be annexed and folded to eight and one-half by eleven-inch (8 1/2" × 11") size whenever practicable. Printing on both sides of the page is encouraged. Lines shall be double-spaced, except that footnotes and quotations in excess of three (3) lines may be single-spaced. Reproduction of any of these documents may be by any process provided all copies are clear and permanently legible. Electronically filed pleadings or briefs shall be formatted in the same manner as paper filings.

*[(14)]***(12)** Pleadings and briefs which are not in substantial compliance with this rule, applicable statutes**,** or commission orders *[shall]* **may** not be accepted for filing. In addition, filings will be scanned for computer viruses before being uploaded into the commission's electronic system and may not be accepted if the filing is infected. The secretary of the commission may return these pleadings or briefs with a concise explanation of the deficiencies and the reasons for not accepting them for filing. Tendered filings which have been rejected *[shall]* **may** not be entered on the commission's docket. The mere fact of filing shall not constitute a waiver of any noncompliance with these rules**,** and the commission may require amendment of a pleading or entertain appropriate motions in connection with the pleading.

*[(15)]***(13)** Parties shall be allowed *[not more than]* ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission.

*[(16)]***(14)** Any *[party seeking]* **request for** expedited treatment *[in any case]* shall include *[in the title of the pleading]* the words "Motion for Expedited Treatment" **in the title of the pleading**. The pleading shall also set out with particularity the following:

(A) The date by which the party desires the commission to act;

(B) The harm that will be avoided, or the benefit that will accrue, including a statement of the negative effect, or that there will be no negative effect, on the party's customers or the general public, if the commission acts by the date desired by the party; and

(C) That the pleading was filed as soon as it could have been or an explanation why it was not.

(15) Unless otherwise provided by these rules or by other law, the party filing a pleading or brief shall serve every other party, including the staff counsel and the public counsel, a copy of the pleading or brief and cover letter. Any party may contact the secretary of the commission for the names and addresses of the parties in a case.

*[(17)]***(16)** Methods of Service.

(A) Any person entitled by law may serve a document on a represented party by—

1. Delivering it to the party's attorney;

2. Leaving it at the office of the party's attorney with a secretary, clerk**,** or attorney associated with or employed by the attorney served;

3. Mailing it to the last known address of the party's attorney;

4. Transmitting it by facsimile machine to the party's attorney; or

5. Transmitting it to the e*[-]*mail address of the party's attorney.

(B) Any person entitled by law may serve a document on an unrepresented party by—

1. Delivering it to the party; or

2. Mailing it to the party's last known address.

(C) Completion of Service.

1. Service by mail is complete upon mailing.

2. Service by facsimile transmission is complete upon actual receipt.

3. Service by e*[lectronic]*mail is complete upon actual receipt.

[(18) Unless otherwise provided by these rules or by other law, the party filing a pleading or brief shall serve every other party, including the general counsel and the public counsel, a copy of the pleading or brief and cover letter.]

*[(19)]***(17)** Every pleading or brief shall include a certificate of service. Such certificate of service shall be adequate proof of service.

*[(20)]***(18)** Any pleading may be amended within ten (10) days of filing, unless a responsive pleading has already been filed, or at any time by leave of the commission. **Parties shall be allowed ten (10) days from the date of filing in which to respond to an amended pleading unless otherwise ordered by the commission.**

*[(21)]***(19)** Any list of issues ordered by the commission must *[contain one (1) or more]* **set out each** question*[s]* presented for decision**. Each question presented should be clear and concise.***[***, stated in the following form per issue: in three (3) separate sentences, with factual and legal premises, followed by a short question; in no more than seventy-five (75) words; and with enough facts woven in that the commission will understand how the question arises in the case.*

(A) The questions must be clear and brief, using the style of the following examples of issue statements, which illustrate the clarity and brevity that the parties should aim for:

1. Example A: The Administrative Procedures Act does not require the same administrative law judge to hear the case and write the final order. ABC Utility Company filed an appeal based on the fact that the administrative law judge who wrote the final order was not the administrative law judge who heard the case. Is it reversible error for one administrative law judge to hear the case and a different administrative law judge to write the final opinion?

2. Example B: For purposes of establishing rates, ABC Utility Company is entitled to include in its costs expenses relating to items that are used or useful in providing services to its customers. ABC Utility Company has spent money to clean up environmental damages resulting from the operation of manufactured-gas plants some 70 to 80 years ago. Should ABC Utility Company be allowed to include these expenses among its costs in establishing its future natural gas rates?]

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed March 2, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED RESCISSION

4 CSR 240-2.085 Protective Orders. This rule prescribed the procedures for obtaining a protective order.

PURPOSE: This rule is being rescinded because it is being incorporated into 4 CSR 240-2.135.

AUTHORITY: section 386.410, RSMo Supp. 1998. Original rule filed Aug. 24, 1999, effective April 30, 2000. Rescinded: Filed March 2, 2011.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars ($500) in the aggregate.

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Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.110 Hearings. The commission is amending sections (4)–(8).

PURPOSE: This rule is being amended to give broader authority to the presiding officer in handling procedural matters, to reflect the current organizational structure of the commission, to specifically state that a court reporter may be used in proceedings other than a formal hearing, to simplify the procedure for correcting a transcript, and make other non-substantive clarifications and cosmetic changes to the rule.

(4) *[The presiding officer may limit the number of witnesses, exhibits, or the time for testimony including limitations consistent with the application of the rules of evidence.]* **The presiding officer shall establish a procedural schedule through one (1) or more procedural orders in which the hearing and conference dates are set, date for filing testimony and pleadings are set, and any other applicable parameters are established concerning the order of witnesses, exhibits, or the time for testimony.**

(5) The order of procedure in hearings shall be as follows, unless otherwise agreed to by the parties or ordered by the presiding officer:

(A) In all cases except investigation cases, the applicant or complainant shall open and close, with intervenors following the general counsel**, or his designee,** and the public counsel in introducing evidence; **and**

(B) In investigation cases, the general counsel, or his designee, shall open and close*[; and*

(C) In rate cases, the general counsel shall be given the first opportunity to cross-examine].

(6) A reporter appointed by the commission shall make a full and complete record of *[all cases and testimony in any formal hearing]* **the entire proceeding in any formal hearing or other hearing or proceeding at which the commission determines reporting is appropriate**.

(7) Suggested corrections to the transcript of record shall be offered within ten (10) days after the transcript is filed**,** except for good cause shown. The suggestions shall be in writing and shall be *[served upon the presiding officer and each party]* **filed in the official commission file**. Objections to proposed corrections shall be made in writing within ten (10) days after the filing of the suggestions. The commission shall determine what changes, if any, shall be made in the record after a review of the suggested corrections and any objections.

(8) A party may request that the commission reopen *[a case]* **the record** for the taking of additional evidence if the request is made after the hearing has been concluded, but before briefs have been filed or oral argument presented, or before a decision has been issued in the absence of briefs or argument. Such a request shall be made by filing *[with the secretary of the commission a petition]* **a motion** to reopen the record for the taking of additional evidence *[in accordance with these rules, and serving the petition on all other parties]*. The *[petition]* **motion** shall *[specify the facts which allegedly constitute grounds in]* **assert the** justification*[,]* **for taking additional evidence** including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. The petition shall also contain a brief statement of the proposed additional evidence, and an explanation as to why this evidence was not offered during the hearing.

AUTHORITY: section 386.410, RSMo [Supp. 1998] 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed March 2, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.116 Dismissal. The commission is amending the purpose clause and section (1).

PURPOSE: The purpose clause is being amended because it did not accurately reflect the purpose of the rule. Section (1) is being amended to alter one (1) of the ways to dismiss a complaint after evidence has been offered or prefiled testimony filed. That portion is amended to require the consent of all of the parties instead of just the "adverse" parties to dismiss a complaint without leave of the commission.

PURPOSE: This rule prescribes the conditions under which the commission or an initiating party may dismiss a case ***or by which any party may be dismissed****.*

(1) An applicant or complainant may voluntarily dismiss an application or complaint without an order of the commission at any time before prepared testimony has been filed or oral evidence has been offered*[,]* by filing a notice of dismissal with the commission *[and serving a copy on all parties]*. Once evidence has been offered or prepared testimony filed, an applicant or complainant may dismiss an action only by leave of the commission, or by written consent of **all** the *[adverse]* parties.

AUTHORITY: section 386.410, RSMo [Supp. 1998] 2000. Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.125 Procedures for Alternative Dispute Resolution. The commission is amending sections (1), (2), and (3), renumbering section (6), and deleting sections (4) and (5).

PURPOSE: Section (1) is amended to remove a requirement that was cumbersome and not necessary. Section (2) is amended for clarity and to specifically state that all other time limitations in the commission case will be tolled until a mediation is complete.

(1) Settlement Negotiations.

(A) When the parties agree that the participation of a presiding officer in the settlement process would be beneficial, those parties shall file a motion for appointment of a settlement officer for that case. The motion shall contain—

1. A statement that all parties agree to the procedure;

2. A list of the issues to be addressed or matters the parties wish the presiding officer to aid them in resolving; **and**

[3. If there is no prefiled testimony, a description of the issues of each party; and]

*[4.]***3.** A date by which a settlement will be reached or settlement negotiations under this procedure will end.

(2) Mediation.

(A) The commission may order *[that]* mediation *[proceed in a complaint case]* before any further proceeding in *[such]* **a** case.

(B) As the commission deems appropriate, or upon *[the filing of]* a request for mediation *[by any party, mediation services may be provided by a presiding officer or by a neutral third party for the purpose of identifying the issues and attempting a resolution]***, the commission may appoint a presiding officer or other neutral third party other than the presiding officer assigned to the case to mediate the dispute**.

(C) *[The written application for mediation services should include the case number, the names of each party and a brief explanation of the case.]* **All other actions on the case shall cease and all time limitations shall be tolled pending the completion of mediation process, except as otherwise provided by law.**

*[(3)]***(D)** The *[settlement officer or the]* mediator*[, if that mediator is also a presiding officer,]* shall be disqualified from conducting an evidentiary hearing relating to that particular case and shall not make any communication regarding the settlement or mediation discussions in the case to any commissioner or the presiding officer appointed to preside over the case.

[(4) The commission may order parties to engage in alternative dispute resolution with a commission authorized mediator.]

[(5) At any time, upon the request for mediation or upon the issuance of an order requiring mediation, the commission may order that all other actions on the case cease and all time limitations be tolled pending the completion of mediation process.]

*[(6)]***(E)** Failure to appear and participate in good faith in commission ordered mediation shall be grounds for sanctions including dismissal or default of the noncompliant party.

AUTHORITY: section 386.410, RSMo [Supp. 1998] 2000. Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

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Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.130 Evidence. The commission is amending sections (2), (6), (9)–(12), and (15), adding a new section (8), (9), and (17), renumbering sections (8), (13), (14), and (16), and deleting section (17).

PURPOSE: Most of the edits to this rule are to reorganize it and to clarify the authority of the presiding officer in procedural matters, such as directing the pre-marking of exhibits. New section (8) allows the staff of the commission to file a single report rather than the traditional individually filed testimony for direct testimony. New section (9) specifically states that direct testimony may be live instead of written pre-filed testimony. Section (17) clarifies that there are ten (10) days to object to a late-filed exhibit. Section (18) corrects a rule reference.

(2) If any information contained in a document on file as a public record with the commission is offered in evidence, the document need not be produced as an exhibit unless directed otherwise by the presiding officer, but may be received in evidence by reference, provided that the particular portions of the document shall be specifically identified and are relevant and material. **The information may be assigned an exhibit number for identification.**

(6) **Format for** *[P]***p**repared testimony**.** *[may be filed electronically. If prepared testimony is not filed electronically it]*

(A) It shall be typed or printed, in black type on **a** white *[paper]* **page that is** eight and one-half inches by eleven inches (8 1/2" × 11")*[; it]***.**

(B) It shall be double-spaced and **have** pages numbered consecutively at the bottom right-hand corner or bottom center beginning with the first page as page 1*[;]***.**

(C) If not filed electronically, it shall be filed unfolded and stapled together at the top left-hand margin or bound at an edge in booklet form*[; and it]***.**

(D) It shall have *[the following margins: left-hand margin, one inch (1"); top margin, one inch (1"); right-hand margin, one inch (1"); and bottom margin, one inch (1"). Printing on both sides of the page is encouraged.]* **at least a one-inch (1") margin on the top, bottom, and both sides.**

(E) Schedules shall bear the word "schedule**,**" and the number of the schedule shall be typed in the lower right-hand margin of the first page of the schedule.

(F) All prepared testimony and other exhibits and schedules shall contain the following information in the following format on the upper right-hand corner of a cover sheet:

Exhibit No.:	(To be marked by the hearing reporter)
Issue:	(If known at the time of filing)
Witness:	(Full name of witness)
Type of Exhibit:	(Specify whether direct, rebuttal, or other type of exhibit)
Sponsoring Party:	
Case No.:	
Date Testimony Prepared:	

[The prepared testimony of each witness shall be filed separately and shall be accompanied by an affidavit providing the witness' oath. Prepared testimony]

(G) It shall be filed on line-numbered pages.

(H) Testimony that addresses more than one (1) issue shall contain a table of contents.

(I) Electronically filed prepared testimony shall be formatted and labeled in the same manner as paper filings.

(J) Printing on both sides of the page is encouraged.

(8) Except as set out in this section, the prepared testimony of each witness shall be filed separately and shall be accompanied by an affidavit providing the witness's oath. In lieu of prepared direct testimony, any party may file a report that presents in narrative form the analysis and conclusions of one (1) or more expert witness(es) and the facts and information on which they relied. In any report, the contributing expert witnesses shall be listed together with an indication of the portion or portions of the report to which each contributed. The qualifications of each contributing expert witness shall be attached to the report as a schedule. Any such report shall be filed electronically and shall comply with the commission's filing requirements set forth above.

(9) In any case, the commission or presiding officer may direct that testimony be taken live rather than prepared in advance.

*[(8)]***(10)** No party shall be permitted to supplement prefiled prepared direct, rebuttal**,** or surrebuttal testimony unless ordered by the presiding officer or the commission. A party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed which arise at the hearing. This provision does not forbid the filing of supplemental direct testimony for the purpose of replacing projected financial information with actual results.

*[(9)]***(11)** Any or all parties may file a stipulation as to the facts*[, in which event the same shall be numbered as a joint exhibit]*. This stipulation shall not preclude the offering of additional evidence by any party *[unless otherwise agreed]* **except as specified** in the stipulation.

*[(10)]***(12)** Exhibits shall be legible and, unless otherwise authorized by the commission *[or filed electronically]*, shall be prepared on **a** standard eight and one-half by eleven inch (8 1/2" × 11")-size *[paper]* **page**. The *[sheets]* **pages** of each exhibit shall be numbered and rate comparisons and other figures shall be set forth in tabular form.

*[(11)]***(13)** Exhibits shall be tendered to the reporter at the time of hearing without being prenumbered by the offering party, unless otherwise ordered by the *[commission]* **presiding officer**.

*[(12)]***(14)** All exhibits shall be marked at the time of hearing, using a single series of numbers, unless otherwise ordered by the *[commission]* **presiding officer**.

*[(13)]***(15)** Unless the presiding officer directs otherwise, when exhibits that have not previously been filed are offered in evidence, the original shall be furnished to the reporter, and the party offering exhibits also shall be prepared to furnish a copy to each commissioner, the presiding officer**,** and each party.

*[(14)]***(16)** The presiding officer may require the production of further evidence upon any issue. The presiding officer may authorize the filing of specific evidence as a part of the record within a fixed time after submission, reserving exhibit numbers, and setting other conditions for such production.

(17) Unless otherwise ordered, any objection to the admission of a post-hearing exhibit must be filed within ten (10) days of the date the exhibit was filed.

*[(15)]***(18)** Evidence for which a claim of confidentiality is made shall be *[filed in conformance with a protective order approved by the commission. Parties shall obtain a protective order prior to filing of documentary evidence, except as permitted otherwise by these rules]* **provided in conformance with 4 CSR 240-2.135 or with any protective order specific to that information**.

*[(16)]***(19)** All testimony shall be taken under oath.

[(17) All post-hearing exhibits shall be filed with the secretary of the commission in compliance with 4 CSR 240-2.080. Unless otherwise ordered, any objection to the admission of a post-hearing exhibit must be filed within ten (10) days of the date the exhibit was filed.]

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed March 2, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

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SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.135 Confidential Information. The commission is amending sections (3), (4), (7), (19), and (20), adding a new section (2), and renumbering sections accordingly.

PURPOSE: The amendment to this rule incorporates portions of 4 CSR 240-2.080, Protective Orders, which is being rescinded.

(2) Protective Order. In addition to discovery and testimony which may be designated as highly confidential or proprietary without a protective order from the commission as set out in this rule, any person may seek an order protecting information from disclosure by the commission. A request for a protective order shall be made as follows:

(A) By filing a separate pleading denominated "Motion for Protective Order";

(B) The pleading shall state with particularity why the moving party seeks protection and what harm may occur if the information is made public;

(C) The pleading shall also state whether any of the information for which a claim of confidentiality is made can be found in any other open public document;

(D) The information provided to the commission may be designated as highly confidential or proprietary while the motion is pending;

(E) Any information designated as highly confidential or proprietary shall be provided in a redacted public version and a complete confidential version the same as for testimony as set out in section (11) of this rule; and

(F) If the motion is granted, the information shall be protected from disclosure as set out in sections (3)–(22) of this rule.

*[(2)]***(3)** When a party seeks discovery of information that the party from whom discovery is sought believes to be confidential, the party from whom discovery is sought may designate the information as proprietary or highly confidential.

(A) No order from the commission is necessary before a party in any case pending before the commission may designate material as proprietary or highly confidential and such information shall be protected as provided in this rule.

(B) The party that designates information as proprietary or highly confidential must inform, in writing, the party seeking discovery of the reason for the designation at the same time it responds to the discovery request. If the party seeking discovery disagrees with the designation placed on the information, it must utilize the informal discovery dispute resolution procedures set forth at 4 CSR 240-2.090(8). If the party seeking discovery continues to disagree with the designation placed on the information, it may file a motion challenging the designation.

(C) This rule does not require the disclosure of any information that would be protected from disclosure by any privilege, rule of the commission, or the Missouri Rules of Civil Procedure.

*[(3)]***(4)** Proprietary information may be disclosed only to the attorneys of record for a party and to employees of a party who are working as subject-matter experts for those attorneys or who intend to file testimony in that case, or to persons designated by a party as an outside expert in that case.

(A) The party disclosing information designated as proprietary shall serve the information on the attorney for the requesting party.

(B) If a party wants any employee or outside expert to review proprietary information, the party must identify that person to the disclosing party by name, title, and job classification*[,]* before disclosure. Furthermore, the person to whom the information is to be disclosed must comply with the certification requirements of section *[(6)]***(7)** of this rule.

(C) A customer of a utility may view his or her own customer-specific information, even if that information is otherwise designated as proprietary.

*[(4)]***(5)** Highly confidential information may be disclosed only to the attorneys of record, or to outside experts that have been retained for the purpose of the case.

(A) Employees, officers, or directors of any of the parties in a proceeding, or any affiliate of any party, may not be outside experts for purposes of this rule.

(B) The party disclosing highly confidential information*[,]* may, at its option, make such information available only on the furnishing party's premises, unless the discovering party can show good cause for the disclosure of the information off-premises.

(C) The person reviewing highly confidential information may not make copies of the documents containing the information and may make only limited notes about the information. Any such notes must also be treated as highly confidential.

(D) If a party wants an outside expert to review highly confidential information, the party must identify that person to the disclosing party before disclosure. Furthermore, the outside expert to whom the information is to be disclosed must comply with the certification requirements of section *[(6)]***(7)** of this rule.

(E) Subject to subsection *[(4)]***(5)**(B), the party disclosing information designated as highly confidential shall serve the information on the attorney for the requesting party.

(F) A customer of a utility may view his or her own customer-specific information, even if that information is otherwise designated as highly confidential.

*[(5)]***(6)** If any party believes that information must be protected from disclosure more rigorously than would be provided by a highly confidential designation, it may file a motion explaining what information must be protected, the harm to the disclosing entity or the public that might result from disclosure of the information, and an explanation of how the information may be disclosed to the parties that require the information while protecting the interests of the disclosing entity and the public.

*[(6)]***(7)** Any employee of a party that wishes to review proprietary information, or any outside expert retained by a party that wishes to review highly confidential or proprietary information must first certify in writing that he or she will comply with the requirements of this rule.

(A) The certification must include the signatory's full name, permanent address, title or position, date signed, the case number of the case for which the signatory will view the information, and the identity of the party for whom the signatory is acting.

(B) The signed certificate shall be filed in the case.

(C) The party seeking disclosure of the highly confidential or proprietary information must provide a copy of the certificate to the disclosing party before disclosure is made.

*[(7)]***(8)** Attorneys possessing proprietary or highly confidential information or testimony may make such information or testimony available only to those persons authorized to review such information or testimony under the restrictions established in sections *[(3)]***(4)** and *[(4)]***(5)**.

*[(8)]***(9)** If information to be disclosed in response to a discovery request is information concerning another entity—whether or not a party to the case—which the other entity has indicated is confidential, the disclosing party must notify the other entity of its intent to disclose the information. If the other entity informs the disclosing party that it wishes to protect the material or information, the disclosing party must designate the material or information as proprietary or highly confidential under the provisions of this rule.

*[(9)]***(10)** Any party may use proprietary or highly confidential information in prefiled testimony, in a pleading, or at hearing, if the same level of confidentiality assigned by the disclosing party, or the commission, is maintained. Before including nonpublic information that it has obtained outside this proceeding in its pleading or testimony, a party must ascertain from the source of the information whether that information is claimed to be proprietary or highly confidential.

*[(10)]***(11)** A party may designate portions of prefiled or live testimony as proprietary or highly confidential. Prefiled testimony that contains information designated as proprietary or highly confidential must be filed as follows:

(A) A public version of the prefiled testimony must be filed along with the proprietary or highly confidential version of the testimony. For the public version, the proprietary or highly confidential portions must be obliterated or removed. The proprietary pages must be marked "P" and the removal of proprietary information shall be indicated by one (1) asterisk before and after the information, e.g., *proprietary information removed*. The highly confidential pages must be marked "HC" with the removal of highly confidential information indicated by **underlining and** two (2) asterisks *[and underlining]* before and after the highly confidential information, e.g., **highly confidential information removed**. The designated information must be removed with blank spaces remaining so that the lineation and pagination of the public version remains the same as the highly confidential and proprietary versions;

(B) For the nonpublic version of the prefiled testimony, the proprietary pages must be marked "P" and the proprietary information indicated by one (1) asterisk before and after the information, e.g.,*Proprietary*. The highly confidential pages shall be stamped "HC" with the highly confidential information indicated by underlining and by two (2) asterisks before and after the highly confidential information, e.g., **Highly Confidential**; and

(C) At the hearing, the party offering the prefiled testimony must present a public version of the testimony in which the proprietary or highly confidential portions are obliterated or removed. The public version of the testimony will be marked as Exhibit ___. The offering party must also present a separate copy of the prefiled testimony containing proprietary or highly confidential information, sealed in an envelope. The version of the testimony containing proprietary or highly confidential information will be marked as Exhibit ___P or HC, as appropriate.

*[(11)]***(12)** Not later than ten (10) days after testimony is filed that contains information designated as proprietary or highly confidential, any party that wishes to challenge the designation of the testimony may file an appropriate motion with the commission.

(A) If the designation of the testimony is challenged, the party asserting that the information is proprietary or highly confidential must, not later than ten (10) days, unless a shorter time is ordered, file a pleading establishing the specific nature of the information that it seeks to protect and establishing the harm that may occur if that information is disclosed to the public.

(B) If the asserting party fails to file the pleading required by this section, the commission may order that the designated information be treated as public information.

*[(12)]***(13)** If a response to a discovery request requires the duplication of material that is so voluminous, or of such a nature that copying would be unduly burdensome, the furnishing party may require that the material be reviewed on its own premises, or at some other location, within the state of Missouri.

*[(13)]***(14)** If prefiled testimony includes information that has previously been designated as highly confidential or proprietary in another witness's prefiled testimony, that information must again be designated as highly confidential or proprietary.

*[(14)]***(15)** All live testimony, including cross-examination and oral argument, *[that]* **which** reveals information that is designated as proprietary or highly confidential*[,]* may be offered only after the hearing room is cleared of all persons except those persons to whom the highly confidential or proprietary information is available under this rule. The transcript of such live testimony or oral argument will be kept under seal and copies will be provided only to the commission and the attorneys of record. The contents of such transcripts may not be disclosed to anyone other than those permitted access to the designated information under this rule.

*[(15)]***(16)** Proprietary or highly confidential information may not be quoted in briefs or other pleadings unless those portions of the briefs or other pleading are also treated as proprietary or highly confidential.

*[(16)]***(17)** All persons who have access to information under this rule must keep the information secure and may neither use nor disclose such information for any purpose other than preparation for and conduct of the proceeding for which the information was provided. This rule shall not prevent the commission's staff or the Office of the Public Counsel from using highly confidential or proprietary information obtained under this rule as the basis for additional investigations or complaints against any utility company.

*[(17)]***(18)** After receiving an appropriate writ of review, the commission will deliver proprietary and highly confidential testimony constituting part of the record before the commission to the reviewing court under seal, unless otherwise directed by the court.

*[(18)]***(19)** Within ninety (90) days after the completion of the proceeding, including judicial review, all copies of all proprietary and highly confidential information, testimony, exhibits, transcripts or briefs in the possession of any party must be returned to the party claiming a confidential interest in such information, if that party requests that the information be returned. Otherwise, the information must be destroyed by the party possessing such information. Any notes pertaining to such information must be destroyed.

*[(19)]***(20)** The provisions of sections *[(3)]***(4)**, *[(4)]***(5)**, *[(6)]***(7)**, *[(7)]***(8)**, and *[(18)]***(19)** of this rule do not apply to officers or employees of the commission or to the public counsel or employees of the Office of the Public Counsel. The officers or employees of the commission and the public counsel and employees of the Office of the Public Counsel are subject to the nondisclosure provisions of section 386.480, RSMo. Neither the officers or employees of the commission, nor the public counsel and the employees of the Office of the Public Counsel shall use or disclose any information obtained in discovery for any purpose other than in the performance of their duties.

*[(20)]***(21)** Outside experts of the staff of the commission or the Office of the Public Counsel who have been contracted to be witnesses in the proceeding have access to designated information and testimony on the same basis as the staff of the commission and the Office of the Public Counsel except that the outside expert must comply with the provisions of sections *[(6)]***(7)** and *[(18)]***(19)**. Outside experts of the staff of the commission and the Office of the Public Counsel who have not been contracted to be witnesses in the proceeding are subject to all provisions of this rule.

*[(21)]***(22)** A claim that information is proprietary or highly confidential is a representation to the commission that the claiming party has a reasonable and good faith belief that the subject document or information is, in fact, proprietary or highly confidential.

*[(22)]***(23)** The commission may waive or grant a variance from any provision of this rule for good cause shown.

AUTHORITY: sections 386.040 and 386.410, RSMo 2000. Original rule filed May 25, 2006, effective Jan. 30, 2007. Amended: Filed March 2, 2011.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.140 Briefs and Oral Arguments. The commission is amending sections (1) and (2), renumbering section (3), deleting section (4), and adding a new section (5).

PURPOSE: This rule is amended to clarify when and how briefs and other post-hearing filings can be made and to eliminate the requirement for sending service copies of briefs by overnight mail.

(1) **In any case,** *[T]***t**he commission or presiding officer shall determine whether the parties may file briefs or present oral argument, or both, *[in any case]* **and may establish time and page limits**.

(2) Unless otherwise ordered by the commission or presiding officer, *[when briefs are to be filed in any case, the parties shall have]* **post-hearing briefs shall be filed no later than** twenty (20) days after the date on which the complete transcript of the hearing is filed *[to file their initial briefs]*.

(3) Unless otherwise ordered by the commission or presiding officer, the parties shall have ten (10) days after the filing of the initial briefs to file their reply briefs. *[When a reply brief is due ten (10) days after filing of initial briefs, the initial briefs shall be sent to all parties by overnight mail or hand-delivered on the day of filing or the next day.]*

*[(3)]***(4)** Unless otherwise ordered by the commission or presiding officer, the time allowed for oral argument shall be—

(A) For an applicant or complainant, thirty (30) minutes, which may be divided between the initial argument and reply argument, but no more than one-third (1/3) of the time shall be consumed by the reply argument; and

(B) For all other parties, a total of fifteen (15) minutes each.

[(4) The commission may at its discretion order the parties to file suggested findings of fact, conclusions of law, and ordered paragraphs.]

(5) Unless otherwise ordered by the commission or presiding officer, the parties may file pre-hearing briefs, statements of position, and proposed findings of fact and conclusions of law.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.160 Rehearings and Reconsideration. The commission is amending section (2).

PURPOSE: This rule is amended to clarify that the commission can rehear, amend, reconsider, or correct any order previously issued in the case.

(2) Motions for reconsideration of procedural and interlocutory orders may be filed within ten (10) days of the date the order is issued, unless otherwise ordered by the commission. Motions for reconsideration shall set forth specifically the ground(s) on which the applicant considers the order to be unlawful, unjust, or unreasonable. **At any time before a final order is issued, the commission may, on its own motion, reconsider, correct, or otherwise amend any order or notice issued in the case.**

*AUTHORITY: section 386.410, RSMo [Supp. 1998] **2000**. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.180 Rulemaking. The commission is deleting section (1), amending sections (2)–(5), (7), and (8), adding a new section (4), and renumbering sections.

PURPOSE: This rule is being amended to reorganize and clarify it, to change "testimony" to "comments" to more accurately reflect the rulemaking process, and to replace statutory language with a reference to the statute.

[(1) Promulgation, amendment, or rescission of rules adopted by the commission in Division 240 of Title 4 may be proposed, adopted, and published by approval of the commission as provided by law.]

*[(2)]***(1)** Promulgation, amendment, or rescission of rules may be *[instituted]* **initiated** by the commission through an internally-generated rulemaking case, or pursuant to a rulemaking petition filed with the commission.

*[(3)]***(2)** Petitions for promulgation, amendment**,** or rescission of rules shall be *[as follows:*

(A) Each petition for promulgation, amendment, or rescission of rules made pursuant to Chapter 536, RSMo, shall be] filed with the secretary of the commission in writing and shall include:

*[1.]***(A)** The name, street address, and mailing address of the petitioner;

*[2.]***(B)** One (1) of the following:

*[A.]***1.** The full text of the rule sought to be promulgated*[, if no rule on the subject currently exists]*;

*[B.]***2.** The full text of *[the]* **any** rule sought to be amended, including the suggested amendments*[, if amendment of an existing rule is sought]* **clearly marked**; **or**

[C. The full text of the existing rule and the full text of the rule proposed to replace the existing rule, if the proposed changes to the existing rule are so substantial as to make replacement of the existing rule more efficient than amendment thereof; or]

*[D.]***3.** The full *[text]* **number** of *[the]* **any** rule sought to be rescinded*[, if rescission of an existing rule is sought]*;

*[3.]***(C)** A statement of petitioner's reasons in support of the promulgation, amendment, or rescission of the rule, including a statement of all facts pertinent to petitioner's interest in the matter;

*[4.]***(D)** Citations of legal authority which authorize, support, or require the rulemaking action requested by the petition;

*[5.]***(E)** An estimation of the effect of the rulemaking on private persons or entities with respect to required expenditures of money or reductions in income, sufficient to form the basis of a fiscal note as required under Chapter 536, RSMo; and

*[6.]***(F)** A verification of the petition by the petitioner by oath*[; and]***.**

*[(B)]***(3)** The commission shall either deny the petition in writing, stating the reasons for its decision, or shall initiate rulemaking in accordance with Chapter 536, RSMo.

(4) The commission shall comply with the notice provisions of section 536.041, RSMo, upon the disposal of any rulemaking petition.

*[(4)]***(5)** When the commission decides to promulgate, amend, or rescind a rule, it shall *[issue a notice of proposed rulemaking for the secretary of state to publish in the Missouri Register. The notice of proposed rulemaking shall contain the following:*

(A) Instructions for the submission of written comments by anyone wishing to file a statement in support of or in opposition to the proposed rulemaking, by a specific date which shall not be fewer than thirty (30) days after the publication date; or

(B) Instructions and notice for both a written comment period and hearing] **comply with the requirements for rulemaking in Chapter 536, RSMo**.

*[(5)]***(6)** Persons wishing to file **written** comments or *[testify]* **comment** at the hearing need not be represented by counsel, but may be so represented if they choose.

*[(6)]***(7)** Hearings on rulemakings may be for commissioner questions or for the taking of initial or reply comments.

*[(7)]***(8)** Hearings for the taking of initial or reply comments on rulemakings shall proceed as follows:

(A) A commissioner or presiding officer shall conduct the hearing, which shall be transcribed by a reporter;

[(B) Persons wishing to testify shall be sworn by oath;]

*[(C)]***(B)** Persons *[testifying]* **commenting at a hearing** may give a statement in support of or in opposition to a proposed rulemaking. The commissioners or the presiding officer may question those persons *[testifying]* **commenting**;

*[(D)]***(C)** Statements shall first be taken from those supporting a proposed rule, followed by statements from those opposing the rule, unless otherwise directed by the presiding officer; *[and]*

*[(E)]***(D)** Persons *[testifying]* **commenting** may offer exhibits in support of their positions*[.]***; and**

(E) The commission may, at the hearing, hold the hearing open for a specified period if it determines extension is reasonably necessary to elicit material information.

*[(8)]***(9)** *[Within ninety (90) days after the end of a written comment period or the end of a hearing on a rulemaking, the commission shall issue an order of rulemaking which shall be published in the Missouri Register by the secretary of state. The order of rulemaking shall briefly summarize the general nature of the comments or statements made during the comment period or hearing, shall contain the findings required by]* **In compliance with the requirements of** Chapter 536, RSMo**,** *[and]* **the commission** shall either—

(A) Adopt the proposed rule or proposed amendment as set forth in the notice of proposed rulemaking without further change;

(B) Adopt the proposed rule or proposed amendment with further changes;

(C) Adopt the proposed rescission of the existing rule; or

(D) Withdraw the proposed rule.

*AUTHORITY: sections 386.040, 386.250, 386.310, 386.410, 392.210, 392.280, 392.290, 392.330, 393.140(3), (4), (6), (9), (11), and (12), 393.160, 393.220, 393.240, 393.290, and 394.160, RSMo [Supp. 1998] **2000** and 392.200, 392.220, 392.240, and 393.110, **RSMo Supp. 2010**. Original rule filed April 26, 1976, effective Sept. 11, 1976. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices no later than May 16, 2011, and should include a reference to Commission Case No. AX-2011-0094. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed amendment is scheduled for May 19, 2011, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 50—Office of Quality Schools
Chapter 345—Missouri School Improvement Program

PROPOSED RULE

5 CSR 50-345.105 Missouri School Improvement Program—5

PURPOSE: This rule implements an accountability system for Missouri public school districts and is designed to stimulate and encourage improvement in student performance. An assessment of school districts' educational outcomes will enable the State Board of Education to classify districts as required by state law.

(1) Pursuant to section 161.092, RSMo, this rule is to be effective two (2) years from the date of adoption of the proposed rule by the State Board of Education (board). The *Missouri School Improvement Program (MSIP)—5 Performance Standards and Indicators*, Appendix A, included herein, is comprised of quantitative standards for school districts.

(2) Annually, the Department of Elementary and Secondary Education (department) will select school districts which will be reviewed and classified in accordance with this rule, including the standards, using the appropriate scoring guide, forms, and procedures outlined by the department.

(3) The board will assign classification designations of unaccredited, provisionally accredited, and accredited based on the standards of the MSIP.

(4) As a condition of receiving a classification designation other than unaccredited, each school district reviewed under MSIP must maintain a current school improvement plan in a form specified by the department and implement it in accordance with a specified schedule approved by the department.

(5) A school district's classification designation based on the standards of the MSIP will remain in effect until the board approves another designation. The board may consider changing a district's classification designation after its review or upon its determination that the district has—

(A) Failed to implement any required school improvement plan at an acceptable level;

(B) Successfully implemented its school improvement plan and, therefore, may qualify for a higher classification designation;

(C) Employed a superintendent or chief executive officer without a valid Missouri superintendent's certificate in a K-12 school district or employed a superintendent or chief executive officer without a valid Missouri superintendent's or elementary principal's certificate in a K-8 school district;

(D) Altered significantly the scope or effectiveness of the programs, services, or financial integrity upon which the original classification designation was based; and/or

(E) Failed to comply with a statutory requirement.

(6) The board of education of any school district which is dissatisfied with the classification designation assigned by the board shall request reconsideration within thirty (30) days of notice received of the original classification. The request for reconsideration shall be submitted to the commissioner of education and state the specific basis for reconsideration, including any errors of fact cited to support reconsideration. Review by the board shall be based upon the materials submitted with the original classification, the request for reconsideration, and any materials offered by the commissioner of education or requested by the board.

APPENDIX A
Missouri School Improvement Program
MSIP 5—Performance Standards and Indicators

The State Board of Education (board) first established standards for the classification and accreditation of Missouri's school districts in 1950. The process of classifying and accrediting school districts took on greater significance in 1990 when the board adopted new classification standards to be implemented through the Missouri School Improvement Program (MSIP). While the board and the Department of Elementary and Secondary Education (department) have a legal mandate to evaluate and classify public schools, the goal of the process is to promote school improvement within each district on a statewide basis.

The standards have been reviewed and revised over time to reflect changing conditions in our schools, as well as changing demands and expectations of citizens and school patrons. Our 21st Century students learn in a format different from that of the 1950s, and they require an ever-changing set of skills. To compete globally, Missouri's students must be prepared to succeed in higher education institutions or technical post-secondary programs.

The MSIP—5 Performance Standards and Indicators are created to guide school districts in this improvement effort. During the first, second, third, and fourth cycles of MSIP evaluations (1990 to present), this focus on school improvement has stimulated significant progress and change in school districts throughout the state. The revised standards and indicators represent a continued refinement of the previous four (4) versions of MSIP standards and promote an emphasis on student achievement and other performance measures.

Procedural changes of note include:

1. A five (5)-year cyclical review schedule is no longer adequate. District performance as measured by the MSIP performance standards will be reviewed annually to allow for early intervention.

2. Additional measures, not included in the performance standards and indicators, may be used for reporting purposes on the Annual Performance Report. Examples of data that will be used for reporting purposes include:

a. In districts providing early childhood programs (voluntary Pre-K through grade 3), student performance on assessments included in the Missouri early childhood assessment system (The Missouri early childhood assessment system will be piloted in districts in the 2012–2013 school year and will become operational in the 2013–2014 school year.);
b. The percent of graduates enrolled in remedial coursework in college; and
c. The percent of students who successfully progress from ninth grade through high school graduation within five (5) years, attend post-secondary education and graduate with either an associate's degree within three (3) years or a bachelor's degree within six (6) years.

3. The department will collect evidence of best practices implemented in districts across the state. These data will inform future policy determinations and may serve as models for districts to emulate. Examples include:

a. The utilization of common interim assessments;
b. Local assessment practices of content areas not assessed on the Missouri Assessment Program (MAP);
c. Intervention strategies; and
d. Student engagement.

PERFORMANCE STANDARDS FOR K-12 DISTRICTS

1. **Academic Achievement—The district administers assessments required by the Missouri Assessment Program (MAP) to measure academic achievement and demonstrate improvement in the performance of its students over time.**

1. Student performance on assessments required by the MAP meets or exceeds the state standard or demonstrates improvement in performance over time.
2. The percent of students tested on each required MAP assessment meets or exceeds the state standard.
3. Growth data indicate that students meet or exceed growth expectations.

2. **Subgroup Achievement—The district demonstrates required improvement in student performance for its subgroups.**

1. The performance of students identified on each assessment in identified subgroups, including free or reduced price lunch, racial/ethnic background, English language learners, students with disabilities, and gender subgroups, meets or exceeds the state standard or demonstrates required improvement.

3. **College and Career Readiness—The district provides adequate post-secondary preparation for all students.**

1. The percent of students who score at or above the state standard on the ACT®, SAT®, COMPASS®, or Armed Services Vocational Aptitude Battery (ASVAB) assessments meets or exceeds the state standard or demonstrates required improvement.
2. The district's average ACT® and/or SAT® composite score(s) meets or exceeds the state standard or demonstrates required improvement.
3. The percent of students participating in the ACT® and/or SAT® meets or exceeds the state standard or demonstrates required improvement.
4. The percent of students who earn a qualifying score on an Advanced Placement (AP), International Baccalaureate (IB), or Technical Skills Attainment (TSA) assessment and/or receive college credit through early college or dual enrollment in approved courses meets or exceeds the state standard or demonstrates required improvement.
5. The percent of students who attend post-secondary education/training or are in the military within six (6) months of graduating meets

the state standard or demonstrates required improvement.

4. **Attendance Rate—The district ensures all students regularly attend school.**
   1. The percent of students who regularly attend school meets or exceeds the state standard or demonstrates required improvement.

5. **Graduation Rate—The district ensures all students successfully complete high school.**
   1. The percent of students who complete an educational program that meets the graduation requirements as established by the board meets or exceeds the state standard or demonstrates required improvement.

PERFORMANCE STANDARDS FOR K-8 DISTRICTS

1. Academic Achievement—The district administers assessments required by the MAP to measure academic achievement and demonstrates improvement in the performance of its students over time.
   1. Student performance on assessments required by the MAP meets or exceeds the state standard or demonstrates improvement in performance over time.
   2. The percent of students tested on each required MAP assessment meets or exceeds the state standard.
   3. Growth data indicate that students meet or exceed growth expectations.

2. Subgroup Achievement—The district demonstrates required improvement in student performance for its subgroups.
   1. The performance of students identified on each assessment in identified subgroups, including free or reduced price lunch, racial/ethnic background, and gender subgroups, meets or exceeds the state standard or demonstrates required improvement.

3. High School Readiness—The district provides adequate post-elementary preparation for all students.
   1. The percent of students who earn a proficient score on one (1) or more of the high school end-of-course assessments while in elementary school meets or exceeds the state standard or demonstrates required improvement.

4. Attendance Rate—The district ensures all students regularly attend school.
   1. The percent of students who regularly attend school meets or exceeds the state standard or demonstrates required improvement.

AUTHORITY: sections 160.518, 161.092, 162.081, and 168.081, RSMo Supp. 2010 and sections 160.514, 160.526, and 167.131, RSMo 2000. Original rule filed March 31, 2011.

PUBLIC COST: This proposed rule is estimated to cost school districts three hundred sixty-eight thousand seven hundred forty-two dollars ($368,742) per year for the life of the rule and the Department of Elementary and Secondary Education seven hundred ninety-seven thousand four hundred six dollars ($797,406) per year for the life of the rule with a combined total of $1,166,148 per year for the life of the rule.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in the support of or in opposition to this proposed rule with the Department of Elementary and Secondary Education, Attention: Margie Vandeven, Assistant Commissioner, Office of Quality Schools, PO Box 480, Jefferson City, MO 65102-0480 or by email at msip@dese.mo.gov. Comments also may be submitted online at http://dese.mo.gov/qs/MSIP5.html. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. RULE NUMBER

Title: Department of Elementary and Secondary Education

Division: Office of Quality Schools - 50

Chapter: Missouri School Improvement Program - 345

Type of Rulemaking: Proposed Rule

Rule Number and Name: 5 CSR 50-345.105 Missouri School Improvement Program-5

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Public Elementary & Secondary School Districts	$368,742.00 per year for the life of the rule
Department of Elementary & Secondary Education	$797,406.00 per year for the life of the rule

III. WORKSHEET

For the purposes of this fiscal note, districts are classified into four (4) categories based upon student population and staff size. Public entity cost for public school district is based upon estimates of district staff participation. The number of visits is estimated for the life of the rule, taking into consideration staff interviews and document preparation, and includes a 2% annual increase adjustment from the 4th Cycle of MSIP.

District Category Size	Visits	Team Size	District Cost	Yearly Cost
1	2	60	$14,652	$ 29,304
2	3	30	$ 7,326	$ 21,978
3	60	15	$ 3,663	$219,780
4	40	10	$ 2,442	$ 97,680
				$368,742

Cost for the Department of Elementary and Secondary Education

Team Member Training	$8,618
Team Member Reimbursement	$45,000
In-state Travel for MSIP Staff	$61,595
Data Analysis	$400,000
Advance Questionnaire	$11,000
Panel of Experts/Curriculum Review	$7,019
Staffing	$264,174
TOTAL per year	$797,406

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2220—State Board of Pharmacy
Chapter 2—General Rules

PROPOSED RULE

20 CSR 2220-2.005 Definitions

PURPOSE: This rule defines the term "drug" as utilized in Chapter 338, RSMo, and the rules of the board.

(1) "Drug," "prescription drug," or "legend drug," means any drug or biological product—

(A) Subject to section 503(b) of the Federal Food, Drug and Cosmetic Act, including finished dosage forms and active ingredients subject to section 503(b);

(B) Required by federal law to be labeled with one (1) of the following statements, prior to being dispensed or delivered:

1. "Caution: Federal law prohibits dispensing without prescription";

2. "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

3. "Rx Only"; and

(C) Required by any applicable federal or state law or regulation to be dispensed by prescription only or that is restricted to use by practitioners only.

(2) For purposes of sections 338.300 to 338.370, RSMo, the term "drug," "prescription drug," or "legend drug" shall not include:

(A) An investigational new drug or biological product, as defined by 21 CFR 312.3(b), that is being utilized for the purposes of conducting a clinical trial/investigation of that drug or product if such clinical trial/investigation is governed by, and being conducted pursuant to, 21 CFR 312, et. seq.;

(B) A legend drug or biological product being utilized for the purposes of a clinical trial/investigation that is governed by, and being conducted pursuant to, 21 CFR 312, et. seq.; or

(C) A legend drug or biological product being utilized for the purposes of a clinical trial/investigation that is governed or approved by an institutional review board subject to 21 CFR 56 or 45 CFR Part 46.

AUTHORITY: section 338.010, RSMo Supp. 2010 and sections 338.140, 338.280, and 338.350, RSMo 2000. Emergency rule filed Sept. 3, 2010, effective Sept. 13, 2010, expired March 11, 2011. Original rule filed March 7, 2011.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Board of Pharmacy, PO Box 625, Jefferson City, MO 65102, by facsimile at 573-526-3464, or via email at pharmacy@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety (90)-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 393.1075, RSMo Supp. 2010 and sections 386.040 and 386.250, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-3.163 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 15, 2010 (35 MoReg 1610–1628). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule was held December 20, 2010, and the public comment period ended December 15, 2010. The commission received a number of written comments from seventeen (17) entities, many of which were duplicated or echoed from the various entities and involve the same sections or subsections of the proposed rule. Consequently, these comments have been consolidated into ten (10) central comments, which are addressed below. At the public hearing, seventeen (17) witnesses testified. The entities filing comments were AARP, Union Electric d/b/a Ameren Missouri (Ameren Missouri), Consumers Council of Missouri (CCM), Empire District Electric Company (Empire), KCPL Greater Missouri Operations Company (GMO), Great Rivers Environmental Law Center (GRELC), Kansas City Power and Light Company (KCPL), Missouri Department of Natural Resources (MDNR), Missouri Energy Development Association (MEDA),[1] Missouri Energy Group (MEG), Missouri Industrial Energy Consumers (MIEC),[2] the National Resources Defense Council (NRDC), Office of the Public Counsel (OPC), OPOWER, Inc. (OPOWER), Renew Missouri, staff of the Missouri Public Service Commission (staff), Sierra Club, Walmart Stores East, LP, and Sam's East.

All of the comments were generally in support of a rule to implement demand-side programs and demand-side programs investment mechanisms (DSIMs), but many had suggestions for specific changes to the proposed rule and raised concerns regarding the timing of authorizing DSIMs and whether those mechanisms could include recovery of lost revenues. It should be noted that this proposed rule operates in conjunction with proposed rules 4 CSR 240-3.164, 4 CSR 240-20.093, and 4 CSR 240-20.094. All of these rules were promulgated to implement section 393.1075, RSMo, the Missouri Energy Efficiency Investment Act (MEEIA). Any comments directed towards 4 CSR 240-3.163 may be interrelated with these other proposed rules, and the interplay between these proposed rules may need to be addressed in the context of this order or rulemaking; however, this rule specifically addresses electric utility demand-side program and investment mechanism filing and submission requirements. It should also be noted that while comments were directed at specific sections and subsections of the rule, due to changes in the proposed rule those number citations may not match the final numbering of the sections and subsections of the rule.

[1] The MEDA members include KCPL, GMO, Empire, and Ameren Missouri.

[2] MIEC members include Anheuser-Busch Companies, Inc., BioKyowa, Inc., The Boeing Company, Doe Run, Enbridge, Ford Motor Company, General Motors Corporation, GKN Aerospace, Hussmann Corporation, JW Aluminum, MEMC Electronic Materials, Monsanto, Procter & Gamble Company, Nestlé Purina PetCare, Noranda Aluminum, Saint Gobain, Solutia, and U.S. Silica Company.

COMMENT #1: General Changes in Relation to Alleged Single-Issue Ratemaking. AARP, CCM, MIEC, OPC, and staff all believe that any section or subsection of this rule that allows a rate adjustment outside of a general rate case would constitute unlawful single-issue ratemaking. AARP, CCM, and OPC state it is their belief that the legislature purposely deleted any language in SB 376 (the legislation ultimately codified as section 393.1075, RSMo) that would have allowed for changes to a demand-side program investment mechanism in between general rate cases. The purpose statement and following sections and subsections of this rule identified by these entities that would require change based upon this comment are (1)(F), (1)(G), (1)(I), (1)(J), (1)(K), (2)(A), (2)(C), (2)(F), (2)(J), (2)(K), (3), (4), (4)(B), (5)(A), (5)(B), (8)(A)–(8)(G), (9)(A), and (9)(B).

MEDA, MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC, on the other hand, believe that the language in section 393.1075.3 and .5, RSMo, mandating the commission to provide timely cost recovery and timely earnings opportunities by developing cost recovery mechanisms without limitation allows the commission to establish and approve demand-side programs outside the framework of a general rate case. Section 393.1075.11, RSMo, states the commission "may adopt rules and procedures . . . as necessary, to ensure that electric corporations can achieve the goals of this section." Additionally, these entities point out that section 393.1075.13, RSMo, requires the use of a separate line item for charges attributable to demand-side programs, which is consistent with other billing

elements that are adjusted outside of a general rate case. Taxes, fuel adjustment clauses, purchased gas adjustments, and infrastructure system replacement surcharges are all billed in this fashion. While language in the original version of SB 376 providing for a "cost adjustment clause" was removed, the legislature added "timely cost recovery," broadening the commission's discretion with developing cost recovery mechanisms.

RESPONSE: The commission believes that the express language in section 393.1075, RSMo, unequivocally requires the commission provide timely cost recovery for utilities when effectuating the declared social policy of valuing demand-side investments equal to traditional investments in supply and delivery infrastructure. MEEIA contemplates non-traditional investments and mandates timely cost recovery. The language of the proposed rule does not establish any specific type of demand-side investment mechanism (DSIM). Instead, the proposed rule allows the maximum latitude for creating DSIMs while allowing for periodic adjustments in conformity with the language in the statute. The argument that the proposed rule would in and of itself authorize single-issue ratemaking is unfounded and premature. Until an exact DSIM is established, there is no way to claim that original implementation or any periodic adjustments would constitute single-issue ratemaking.

Additionally, the statutory language from which the prohibition against single-issue ratemaking is derived originates in section 393.270.4, RSMo. The statute is permissive. It allows the commission the discretion to examine all facts that the commission believes are relevant. There is no set statutory requirement for how many or what type of facts or factors the commission must consider when making its determination. Indeed, the legislature has delegated its authority to the commission, being the expert agency charged with making these determinations, to decide what factors must be examined when determining the price to be charged for electricity. The commission will make no changes to the language identified by these comments in the proposed rule or to any other language in the rule that would be related to the issue raised in these comments.

COMMENT #2: Lost Revenue Recovery. AARP, CCM, OPC, MIEC, and staff believe that the lost revenue recovery mechanism provisions of the draft rules are unlawful because those provisions are not authorized by statute. These entities believe that lost revenue does not fit in a cost category. The subsections of this rule identified by these entities that would require change based upon this comment are (1)(F), (1)(I), (1)(K), (1)(O), (1)(P), and (4)(C).

MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC comment that lost revenue recovery is not cost recovery or an earnings opportunity. These entities believe that under the mechanism for recovering lost revenues in the proposed rule, utilities would continue to see higher levels of revenue recovery with higher sales. Therefore, they believe the utility will find itself facing the same conflict it currently faces at the prospect of taking actions or supporting policies to save energy and thereby save their customers money, knowing that such actions would cause their shareholders to miss out on the earnings from higher sales. These entities refer to the incentive to maintain higher sales as the "throughput incentive" and believe this is a strong disincentive for utilities to invest in energy efficiency or to support energy saving policies and measures outside their control.

MEG objects to any language that would allow a lost revenue recovery mechanism, not because it is unlawful but because it believes that reduced costs associated with reduced sales will balance out. MEG also believes that a lost recovery mechanism is inconsistent with the way other charges are handled. According to MEG, a utility believes that energy efficiency programs will reduce sales and reduce contributions to fixed costs, but, using that same reasoning, every time the utility adds a customer, it increases sales and contributions to fixed costs. Consequently, MEG concludes, there should be a refund to customers in any class of ratepayers every time a customer is added. MEG also believes there is no way to determine the actual effect of the various energy efficiency programs.

In addition to the other comments made, staff states that only eight (8) other states allow recovery of lost revenues. According to staff, other states that have had such a recovery mechanism in the past have abandoned it. Staff claims that the movement away from direct reimbursement for lost revenues is likely due to several factors including the fact that the approach is vulnerable to "gaming" by over-claiming savings, that it typically leads to very contentious reconciliation hearings as parties argue about the measurement of savings, and that it does not do anything to address the utility disincentive regarding broader energy efficiency policies beyond the specific program addressed with the mechanisms. Staff notes that other commissions have addressed this issue either through decoupling mechanisms and/or performance incentives. Staff recommends the "throughput incentive" be addressed through the utility incentive component of a DSIM.

MEDA believes that section 393.1075.3, RSMo, mandates recovery of all reasonable and prudent costs and requires the commission to ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently. MEDA members comment that unless a utility's lost revenues are included in the DSIM or other recovery mechanism, there will always be a financial bias against fully utilizing demand-side management programs that result in the reduction of a utility's revenues.

RESPONSE: Section 393.1075.3, RSMo, requires the commission to "allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs." Additionally, section 393.1075.3(2), RSMo, requires the commission to ensure that "utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently." Section 393.1075.5, RSMo, states the commission "may develop cost recovery mechanisms to further encourage investment in demand-side programs . . ." Lost revenue is a cost of delivering cost-effective demand-side programs, and the proposed rule, in conjunction with the interrelated proposed rules, i.e., 4 CSR 240-3.164, 4 CSR 240-20.093, and 4 CSR 240-20.094, require evaluation, measurement, and verification (EM&V). Any request for recovery of lost revenue will have to be verified and approved by the commission prior to recovery.

At the rulemaking hearing on December 20, 2010, several participants commented that decoupling could prevent over- and under-earning and that it might present a better long-term solution than allowing recovery of lost revenues. However, section 393.1075.5, RSMo, requires the commission to conclude a docket studying any rate design modification to those currently approved by the commission prior to promulgating an appropriate rule in that regard. Decoupling represents such a change in rate design, and no docket has been opened at this time to fully explore this or other possible changes. The commission has been directed by the legislature to implement section 393.1075, RSMo, and while this proposed rule may ultimately be an intermediary step to decoupling or other changes in rate design models, promulgating a lost revenue recovery mechanism is authorized by MEEIA and, with verification methods in place, the potential for possible "gaming of the system" is minimized. The commission will make no changes to the language identified by these comments in the proposed rule or to any other language in the rule that would be related to the issue raised in these comments.

COMMENT #3: Definition of Lost Revenue. A number of participants raised an issue concerning the issue of how the proposed rule defines lost revenue. Thus, if the commission includes provisions for recovery of lost revenues, these entities debate how "lost revenues" should be defined. See subsections (1)(X) and (1)(R).

MEDA believes that if the commission is going to allow recovery of lost revenue, the definition of "lost revenue" should be modified to conform to the definition included in 4 CSR 240-22. See 4 CSR 240-22.020(38). MEDA sees no reason to have differing definitions in the commission's regulations.

Staff, on the other hand, does not believe that the Chapter 22 definition is appropriate because:

1) The language as drafted is "permissive" in nature and provides for the opportunity for recovery of lost revenues, rather than a guarantee. The proposed MEDA language is more explicit regarding the ability to recover lost revenues;

2) Staff opposes MEDA's proposed use of Chapter 22's definition of lost revenue, because the Chapter 22 definition is used exclusively to exclude lost revenues from the definitions of annualized costs for end-use measures, from the definition of costs for the utility cost test, and from the definition of costs for the total resource cost test. Chapter 22 does not contemplate the use of its definition of lost revenue for any other purposes, and it should not be assumed to be an appropriate definition for the MEEIA rules; and

3) The MEDA language also removes the requirements for evaluation, measurement, and verification (EM&V) of demand-side management (DSM) program results prior to recovery of lost revenue and, therefore, allows for recovery of lost revenues on a prospective basis without any measurement and verification of DSM program results by an independent evaluator. Staff believes that if recovery of lost revenue is included in the MEEIA rules, measurement and verification of lost revenues should be required and should only be accomplished through independent EM&V on a retrospective basis. Lost revenues are based on energy usage that did not occur. In staff's opinion, it is not appropriate to increase customer's rates on guesses as to what the customers who participated in the programs would have used absent the programs without a rigorous EM&V conducted by an independent evaluator.

Staff recommends clarifying the definition of "lost revenues" by changing "net retail" to "net system retail." Staff also proposes changes in the language of the interrelated rule, 4 CSR 240-20.093(2)(G).

Staff's proposed change would apply to subsection (1)(Q) of this proposed rule and the following subsections of the interrelated proposed rules: 4 CSR 240-3.164(1)(M), 4 CSR 240-20.093(1)(Y), and 4 CSR 240-20.094(1)(U).

RESPONSE AND EXPLANATION OF CHANGE: The commission believes staff's proposed revision to the current definition of lost revenue is appropriate and rejects MEDA's proposed revision for the reasons stated by staff. The commission will modify subsection (1)(Q), 4 CSR 240-3.164(1)(M), 4 CSR 240-20.093(1)(Y), and 4 CSR 240-20.094(1)(U) accordingly.

COMMENT #4: Inconsistent Definitions for Designation of Utility's Request for Approval of a Demand-Side Program. In order to clarify language in the interrelated rules related to filing a request for approval of a demand-side program, staff recommends the following definition be included in 4 CSR 240-3.163, 4 CSR 240-20.093, and 4 CSR 240-20.094: "Filing for demand-side program approval means a utility's case filing for approval, modification, or discontinuance of demand-side program(s) which may also include a simultaneous request for the establishment, modification or discontinuance of a DSIM."

After adopting this definition, the following inconsistent terms require clarification:

1) "utility's filing for demand-side program approval" found in subsection (1)(I) and 4 CSR 240-20.093(1)(P);

2) "utility's filing for demand-side program approval proceeding" found in subsections (1)(F), (G), (J), and (K); 4 CSR 240-20.093(1)(M), (N), (Q), (R), and (DD); and 4 CSR 240-20.094(1)(J), (L), (M), and (N);

3) "demand-side program approval proceeding" found in section (9) and subsections (9)(A) and (B); 4 CSR 240-20.093(1)(I), (DD); and 4 CSR 240-20.093(1)(I), (2), (2)(G)2., (3)(B), (4), and (10); and

4) "application for demand-side program approval proceeding" found in 4 CSR 240-20.093(2)(B).

Due to the lack of a definition and the use of inconsistent terminology, it is unclear whether a "filing," "application," or "proceeding" is intended to occur. Therefore, staff recommends that, if this language remains in the proposed MEEIA rules, the recommended definition for the phrase "filing for demand-side program approval" be utilized and that consistent terminology be used throughout the proposed MEEIA rules as indicated above.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees this language should be clarified, but it also believes that inclusion of the word "case" in staff's recommended version could add confusion. Consequently, the commission will adopt a new definition and clarify the terms identified above.

The proposed rulemaking language for this rule and 4 CSR 240-3.164, 4 CSR 240-20.093, and 4 CSR 240-20.094 will be modified accordingly. However, in section (2), a similar inconsistency in language was corrected by removing the words "for the demand-side program filing" since a DSIM can be established at the same time as a demand-side program filing or as a separate DSIM filing.

COMMENT #5: Definition of Probable Environmental Costs. MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC state that the statutory definition of the total resource cost test (TRC) includes "probable environmental compliance costs"; section 393.1075.2(6), RSMo. The proposed rules do not define or even use this term but incorporate instead the definition of "probable environmental costs" from the proposed integrated resource planning (IRP) rule, 4 CSR 240-22.020(46). See subsection (1)(Q), 4 CSR 240-3.164(1)(R), 4 CSR 240-20.093(1)(Y), and 4 CSR 240-20.094(1)(V). The proposed rule 4 CSR 240-22.040(2)(B) does not provide an adequate method of calculating environmental compliance costs. It is restricted to future costs associated with a selected list of pollutants which, in the judgment of utility decision makers, could have a significant effect on rates. SB 376 plainly means to include all costs, including present costs, and a more objective assessment, not one based on "subjective probability" in certain individuals' judgment. The commission needs to include a methodology in its rules for calculating these costs, which might include an environmental cost adder expressed in dollars or, as in Ohio, a percentage externality factor. Relying on the IRP rule to implement SB 376 has the effect of adding criteria such as the subjective judgment of utility decision makers that, as discussed above, are not in the statute.

Related to these concerns, OPC proposed changes to the definition of the TRC as follows: Total resource cost test or TRC means the test that compares the avoided utility costs (including probable environmental compliance costs) to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side. The present value of the program avoided utility benefits shall be calculated over the projected life of the measures installed under the program.

RESPONSE AND EXPLANATION OF CHANGE: The concerns raised by these stakeholders regarding the definitions and relationships between the terms TRC, avoided cost or avoided utility cost, and probable environmental compliance cost are interrelated to OPC's concerns with the definition of TRC echoed in comment #17 to proposed rule 4 CSR 240-20.094. Consequently, the commission will address both of these concerns in its response to each comment.

The current proposed rules 4 CSR 240-3.163(1), 4 CSR 240-3.164(1), 4 CSR 240-20.093(1), and 4 CSR 240-20.094(1) have the same definitions for avoided cost or avoided utility cost, probable environmental cost, and total resource cost test.

Section 393.1075(6), RSMo, defines "total resource cost test" as a test that compares the sum of avoided utility costs and avoided

probable environmental compliance costs to the sum of all incremental costs of end-use measures that are implemented due to the program, as defined by the commission in rules.

The commission proposes changes to the definitions in 4 CSR 240-3.163(1)(C), (R), and (T); 4 CSR 240-3.164(1)(A), (R), and (X); 4 CSR 240-20.093(1)(F), (Z), and (DD); and 4 CSR 240-20.094(1)(D), (W), and (Y) to address the concerns expressed by OPC and by MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC.

Additionally, the commission chooses to not include a methodology in its MEEIA rules for calculating probable environmental compliance costs. The commission notes that section (12) of the proposed rule requires the commission to complete a review of the effectiveness of this rule no later than four (4) years after the effective date at which time it may initiate rulemaking proceeding to revise the rule. Upon review, the commission will have the opportunity to revisit this issue to determine if it is appropriate to include a methodology. The commission's actions on the definitions of avoided cost, probable environmental compliance cost, and total resource cost test are consistent with the commission's actions regarding the interaction between this rule and 4 CSR 240-22 Electric Utility Resource Planning.

COMMENT #6: Definition of Staff. Staff believes that the word "staff" in 4 CSR 240-3.163(1) is too broadly defined in the proposed rule. The definition of staff in each of the draft rules would include attorneys in the Office of the General Counsel other than the general counsel who are not in the Office of the Staff Counsel. Staff is not certain that result is intended. The definitions appear at 4 CSR 240-3.163(1)(S), 4 CSR 240-3.164(1)(V), 4 CSR 240-20.093(1)(BB), and 4 CSR 240-20.094(1)(X).

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff. Not only did the commission not intend to include attorneys in the Office of the General Counsel other than the general counsel who are not in the Office of the Staff Counsel, but the commission will conform the definition of "staff" to that being formulated in the commission's Chapter 2 revisions in order to maintain consistency throughout all of its rules. "Staff" will be redefined.

COMMENT #7: Estimates of the Effect of the DSIM on Customer Rates. MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC express concerns regarding the language in subsection (2)(D). Currently, the supporting information required to be filed with a DSIM under section (2) includes "estimates of the effect of the DSIM on customer rates and average bills for each of the next three (3) years for each rate class."

These entities request that this period be revised to "Estimates of the effect of the DSIM on customer rates and average bills over the life of each measure." The lives of many efficiency measures are much longer than three (3) years. As implementation proceeds and these measures approach saturation, the system benefits realized by all customers and the bill savings realized by direct participants will increase.

RESPONSE AND EXPLANATION OF CHANGE: The commission appreciates the concerns expressed by these stakeholders and will modify subsection (2)(D) accordingly. The commission notes that a demonstration of cost-effectiveness and overall rate impact for each demand-side program and for the total of all demand-side programs of the utility is required in the current proposed rule 4 CSR 240-3.164(2)(B)3. The requirements of 4 CSR 240-3.164(2)(B)3. should provide information similar to that requested by these stakeholders and makes it unnecessary to provide the estimated impact of the proposed DSIM upon customers' rates and average bills over the life of each measure. The commission further notes that five (5) years should be sufficient given that most of these programs are expected to have a life of three to five (3–5) years.

COMMENT #8: Intervention Status. MEDA believes that the language in subsection (9)(A) should be removed because its members believe that intervention status in any subsequent related periodic rate adjustment proceeding should not be automatic for persons or entities granted intervention in a prior demand-side program approval proceeding.

RESPONSE: The commission rejects MEDA's proposal. This provision is designed to ensure due process for those entities claiming a substantive right in association with these proceedings. The utilities' rights are ensured by the requirement that "such person or entity shall file a notice of intention to participate within the intervention period." Thus, no entity involved in a prior proceeding can sleep on its claimed rights.

COMMENT #9: Specific Filing Requirements. During the rulemaking hearing, OPC incorporated by reference its "red-lined" version of the proposed rules and stated it supported all of the recommended changes contained in that July 23, 2010 filing. In that filing OPC proposed several changes to 4 CSR 240-3.163 (not already addressed) as follows:

OPC proposes the following change to 4 CSR 240-3.163(2)(F):

(2)(F) Estimates of the effect of the DSIM utility incentive on utility earnings and key credit metrics for each of the next three (3) years which shows the level of earnings and credit metrics expected to occur for each of the next three (3) years with and without the DSIM utility incentive;

OPC proposes the following change to 4 CSR 240-3.163(5)(A):

(5)(A) A list of all approved demand-side programs and the following information for each approved demand-side program:

1. Actual amounts expended by year, including customer incentive payments;

2. Peak demand and energy savings impacts and the techniques used to estimate those impacts;

3. A comparison of the estimated actual annual peak demand and energy savings impacts to the level of annual peak demand and energy savings impacts that were projected when the program was approved;

4. For market transformation programs, a quantitative and qualitative assessment of the progress being made in transforming the market;

5. A comparison of actual and budgeted program costs, including an explanation of any increase or decrease of more than ten percent (10%) in the cost of a program;

6. The avoided costs and the techniques used to estimate those costs;

7. The estimated cost-effectiveness of the demand-side program and a comparison to the estimates made by the utility at the time the program was approved;

8. The estimated net economic benefits of the demand-side program;

9. For each program where one (1) or more customers have opted out of demand-side programs pursuant to section 393.1075.7, RSMo, a listing of the customer(s) who have opted out of participating in demand-side programs;

10. A copy of the EM&V report for the most recent annual reporting period; and

11. Demonstration of relationship of the demand-side program to demand-side resources in latest filed 4 CSR 240-22 compliance filing.

RESPONSE: When OPC filed these proposed changes, it stated in its filing: "Many of these changes are self-explanatory (e.g., to provide clarity or consistency with the language in MEEIA) and some are described in the comments below." The commission addressed the specific comments where OPC provided an explanation in other portions of this order or in the orders of the interrelated MEEIA rules.

Perhaps OPC has not revisited its comments from July, 23, 2010, but the current version of the proposed rule adopted language in 4 CSR 240-3.163(2)(E) and 4 CSR 240-3.163(5)(A) is virtually identical, if

not completely identical, to the OPC proposed language. Finding there is no distinction between the current language and the proposed changes, the commission will not amend the current language.

COMMENT #10: Requirements for Semi-Annual Adjustments of DSIM Rates. The MEDA stakeholders express concerns over the language in 4 CSR 240-20.093(4)(A)–(D). The language, according to MEDA, sets forth the requirements for semi-annual adjustments of DSIM and should be modified to apply not only to the cost recovery component of the DSIM, but also to all components of the DSIM, i.e., cost recovery, lost margins or lost revenues, and incentive. The MEDA stakeholders recommend that in order to comply with the intent of the MEEIA—in particular timely cost recovery to utilities, aligning utility financial incentives with helping customers use energy efficiently, and providing timely earnings opportunities associated with cost-effective energy efficiency—adjustments of DSIM rates between general rate proceedings should apply to all components of the DSIM. These three (3) components must be addressed in concert to provide a sustainable business model for utilities to pursue DSM programs and both benefit customers and satisfy shareholders.
RESPONSE AND EXPLANATION OF CHANGE: These proposed changes for 4 CSR 240-20.093 created a ripple effect with 4 CSR 240-3.163 that the commission must address in this proposed rule. The commission will not modify the language in 4 CSR 240-20.093(4) as proposed by MEDA to allow adjustments to the DSIM utility lost revenue requirement or to the DSIM utility incentive revenue requirement during the semi-annual adjustment to DSIM rates. The commission notes determination of the DSIM utility lost revenue requirement and the DSIM utility incentive revenue requirement are dependent upon measurement and verification performed by an EM&V contractor and documented in EM&V reports. Such EM&V reports will be performed in accordance with EM&V plans for each demand-side program and demand-side program plan required by 4 CSR 240-3.164(2)(C)13. and will likely be published no more frequently than annually and will not be available semiannually. However, the DSIM cost recovery revenue requirement is not dependent upon measurement and verification performed by an EM&V contractor and documented in EM&V reports but rather depends upon the contemporaneous accounting records of each electric utility.

In the process of reviewing this issue the commission noticed some internal inconsistencies and finds it is necessary to make changes to language contained in 4 CSR 240-20.093(1) and (2). Similarly, six (6) definitions in 4 CSR 240-3.163(1) and (2) must be changed to maintain conformity throughout the MEEIA rules. These changes should provide clarification to this issue.

4 CSR 240-3.163 Electric Utility Demand-Side Programs Investment Mechanisms Filing and Submission Requirements

(1) As used in this rule, the following terms mean:

(C) Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from demand-side programs' energy savings and demand savings associated with generation, transmission, and distribution facilities including avoided probable environmental compliance costs. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs;

(D) Demand means the rate of electric power use over an hour measured in kilowatts (kW);

(G) DSIM cost recovery revenue requirement means the revenue requirement approved by the commission in a utility's filing for demand-side program approval or a semi-annual DSIM rate adjustment case to provide the utility with cost recovery of demand-side program costs based on the approved cost recovery component of a DSIM;

(I) DSIM revenue requirement means the sum of the DSIM cost recovery revenue requirement, DSIM utility lost revenue requirement, and DSIM utility incentive revenue requirement;

(J) DSIM utility incentive revenue requirement means the revenue requirement approved by the commission to provide the utility with a portion of annual net shared benefits based on the approved utility incentive component of a DSIM;

(K) DSIM utility lost revenue requirement means the revenue requirement explicitly approved (if any) by the commission to provide the utility with recovery of lost revenue based on the approved utility lost revenue component of a DSIM;

(P) Filing for demand-side program approval means a utility's filing for approval, modification, or discontinuance of demand-side program(s) which may also include a simultaneous request for the establishment, modification, or discontinuance of a DSIM;

(Q) Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net system retail kWh delivered to jurisdictional customers below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V;

(R) Probable environmental compliance cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility's decision-makers, may be imposed at some point within the planning horizon which would result in environmental compliance costs that could have a significant impact on utility rates;

(S) Staff means all personnel employed by the commission, whether on a permanent or contract basis, except: commissioners; commissioner support staff, including technical advisory staff; personnel in the secretary's office; and personnel in the general counsel's office, including personnel in the adjudication department. Employees in the staff counsel's office are members of the commission's staff; and

(T) Total resource cost test, or TRC, means the test of the cost-effectiveness of demand-side programs that compares the avoided utility costs to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side program.

(2) When an electric utility files to establish a DSIM as described in 4 CSR 240-20.093(2), the electric utility shall file the following supporting information as part of, or in addition to, its direct testimony. Supporting workpapers shall be submitted as executable versions in native format with all formulas intact.

(D) Estimates of the effect of the DSIM on customer rates and average bills for each of the next five (5) years for each rate class.

(H) A proposal for how the commission can determine if any utility incentives component of a DSIM are aligned with helping customers use energy more efficiently.

(9) Party status and providing to other parties affidavits, testimony, information, reports, and workpapers in related proceedings subsequent to the utility's filing for demand-side program approval establishing, modifying, or continuing a DSIM.

(A) A person or entity granted intervention in a utility's filing for demand-side program approval in which a DSIM is approved by the commission shall be a party to any subsequent related periodic rate adjustment proceeding without the necessity of applying to the commission for intervention; however, such person or entity shall file a notice of intention to participate within the intervention period. In any subsequent utility's filing for demand-side program approval, such person or entity must seek and be granted status as an intervenor to be

a party to that proceeding. Affidavits, testimony, information, reports, and workpapers to be filed or submitted in connection with a subsequent related semi-annual DSIM rate adjustment proceeding or utility's filing for demand-side program approval to modify, continue, or discontinue the same DSIM shall be served on or submitted to all parties from the prior related demand-side program approval proceeding and on all parties from any subsequent related periodic rate adjustment proceeding or utility's filing for demand-side program approval to modify, continue, or discontinue the same DSIM, concurrently with filing the same with the commission or submitting the same to the manager of the energy resource analysis section of the staff and public counsel.

(B) A person or entity not a party to the utility's filing for demand-side program approval in which a DSIM is approved by the commission may timely apply to the commission for intervention, pursuant to 4 CSR 240-2.075(2) through (4) of the commission's rule on intervention, respecting any related subsequent periodic rate adjustment proceeding or, pursuant to 4 CSR 240-2.075(1) through (5), respecting any subsequent utility's filing for demand-side program approval to modify, continue, or discontinue the same DSIM.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Chairman's Request for A Status Report Regarding Energy Efficiency Advisory Groups and Collaboratives	)))	**File No. AO-2011-0035**
In the Matter of the Consideration and Implementation of Section 393.1075, RSMo., The Missouri Energy Efficiency Investment Act	))))	**File No. EX-2010-0368**

CHAIRMAN CLAYTON'S CONCURRENCE TO FINAL ORDER OF RULEMAKING AND RESPONSE TO STAFF'S REPORT

Issue Date: February 9, 2011

This Commissioner files this opinion in support of the Final Order of Rulemaking in File No. EX-2010-0368, regulations formulating future efforts in energy efficiency investments for Missouri investor-owned utilities. Additionally, this opinion sets out this Commissioner's response to the Staff Report on energy efficiency programs, filed in Case No. AO-2011-0035. These two cases demonstrate the new commitment to energy efficiency in Missouri in empowering utility customers to take control of their energy bills.

In response to my request, the Staff of the Commission filed a report on September 15, 2010, describing the work of each energy efficiency advisory group and collaborative currently addressing the energy efficiency issues facing Missouri's investor-owned electric and natural gas utilities. The report is an impressive compilation of material summarizing the changes in Missouri's efforts at improving the efficient delivery and use of energy. As our nation faces an uncertain future with regard to energy-related priorities, the compilation of material demonstrates the Commission's new commitment to assisting customers and utilities in better managing our energy usage through efficiency programs.

The report highlights that in the past several years, Missouri utilities have gone from a few efficiency programs inconsistently scattered among varying sectors to a comprehensive offering of programs with relatively consistent goals among all utilities. Collaboratives or stakeholder groups have been established for each utility to collect input and formulate policy involving diverse groups, associations and agencies with many people effectively engaged. Program offerings are considered, funded and implemented through the collaboratives, with joint recommendations made to the Commission for approval or rejection in a rate case. Procedures are now in place for resolution of disputes among parties and more information is being distributed to more utility customers than ever before with a wide array of opportunities to reduce energy bills.

The concept of energy efficiency is being embraced as never before. Utilities are now recognizing the benefits of efficient use through reduced demand and energy charges and with less urgency in identifying new sources of electric generation or natural gas acquisition. With increased efficiency of energy use, customers are less vulnerable to natural gas price volatility. Utilities are able to delay or avoid costly new energy sources. Demand Response programs are in place in some territories in attempts to avoid the use of costly gas "peaker plants" in times of high demand, which demonstrate that utilities and customers can benefit from reducing power generation costs. Efficiency programs, in general, are smoothing increases in overall demand with more manageable growth, while avoiding the difficulties of securing new, costly baseload generation.

Customers have much to gain from efficient use of energy. While customers benefit from lower utility costs, customers also receive the direct benefit education and training in learning how energy is used, how it is priced and how they can find ways to reduce consumption, thereby , reducing their monthly energy bills. Customers must have greater options through utility programs in evaluating appliance purchases, understanding heating

and cooling needs, learning about new technologies, and learning that one's quality of life does not have to decrease when energy is used more efficiently. To customers, effective energy efficiency programs translate into empowerment to take control of their energy bills. Rebates, incentives and education provide customers with the necessary tools to change behavior and change how energy decisions are made.

The Commission has recognized that these new programs require adequate funding to be effective. In 2000, total funding for efficiency programs focused primarily on weatherization in the amount of $875,000, involving a couple of utilities. In 2010, funding levels have increased to $53 million, including all 8 utilities. The Commission has determined that natural gas utilities should strive for the target of EE funding at a minimum of .5% of their gross revenues, and all large gas utilities are moving toward this policy target. Electric utilities are taking similar steps at developing and delivering a comprehensive offering of efficiency programs with sufficient funding levels.

Lastly, as Missouri ramps up its efficiency programs, its investments and its increase in knowledge and action for customers, this Commission and future Commissions must be prepared to address an evolving utility industry. If load growth is curtailed, there will be pressure to reevaluate how rates are set. Utilities will push for equal or greater returns on efficiency investments and new models of incentives for utility performance in meeting Commission goals and priorities. Utilities will demand fair treatment if downward pressure is applied to their efforts at increasing sales for greater revenue. On the other hand, consumers will demand that the Commission apply close supervision to new programs, carefully scrutinize new rate making requests and cautiously evaluate any modification to the traditional rate of return regulatory compact. This and future Commissions will be faced with balancing these potentially competing positions to ensure that programs are cost-effective,

deliver benefits to both customers and utilities, and do not inequitably shift risk or cost. These are complicated challenges in a new world of energy delivery.

The Commission is prepared to tackle these issues and has taken additional steps to gather information and set policy. First, the Commission continues its statewide energy efficiency study with a partnering agency, the Missouri Energy Center. It is this Commissioner's hope that realistic, achievable goals can be identified to provide greater assistance to those working on Missouri's energy future. Secondly, the Commission has concluded the formal rulemaking process with regulations stemming from Senate Bill 376, the Missouri Energy Efficiency Act. Through these rules, the Commission addresses a number of significant policy questions to provide clarity and certainty for current and future efficiency programs. The Commission has developed the rules with an eye towards flexibility and the understanding that incentive mechanisms will require careful planning and design. The Commission will need several "attempts" at determining the large-scale benefits and costs upon all stakeholders. Lessons learned from those efforts will provide future commissions with the knowledge to develop programs effectively. The rules certainly contemplate a changing world where the regulator may no longer demand greater sales of energy, but rather strive for decreased usage. How does a utility reduce its sales but maintain profitability? The rules are designed to consider this conundrum.

In conclusion, this Commissioner commends and thanks the staff of the Commission for its efforts in working through challenging and potentially controversial issues. Most Missourians are unaware of the work of the Public Service Commission and even fewer know the dedication, the expertise and the significant work ethic of the PSC staff. This report illustrates the giant steps taken in recent years and the future work that lies ahead. It is my hope and request that a similar report be prepared annually, in a format for easy

consumption, so that the public and Commissioners may understand what we are doing on critically important issues and how those issues evolve in the future.

Therefore, it is my request that the Staff prepares an annual update to its report, in a format acceptable to Staff, every September 15th, and makes that update available to the Commission and the public.

For the foregoing reasons, this Commissioner concurs.

Respectfully submitted,

Robert M. Clayton III
Chairman

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Consideration and Implementation of Section 393.1075, the Missouri Energy Efficiency Investment Act	)))	Case No. EX-2010-0368

DISSENTING OPINION OF COMMISSIONER ROBERT S. KENNEY

I write to dissent from the majority's Final Orders of Rulemaking regarding the Missouri Energy Efficiency Investment Act.[1] I specifically dissent as it relates to those Rules allowing utilities to recover lost revenue. I dissent because the Missouri Energy Efficiency Investment Act (the "MEEIA" or the "Act"), the statute under which the Commission has authority to promulgate these Rules, does not authorize recovery of lost revenue; I dissent because authorizing recovery of lost revenues does nothing to remove the disincentive it is ostensibly designed to remove; and I dissent because authorizing recovery of lost revenues does not serve the interests of Missouri citizens.

I believe in energy efficiency as a least-cost way of reducing carbon emissions. Along with greater deployment of renewable resources, nuclear energy, and new technologies such as carbon capture and sequestration, energy efficiency measures are a certain and cost-effective way of reducing carbon emissions. Equally as important, energy efficiency measures give utility customers an opportunity to realize savings in their bills.

The MEEIA is the product of Senate Bill No. 376, which was first read February 16, 2009. As with most pieces of legislation, SB 376 as introduced differed from the Senate Substitute for Senate Committee Substitute for SB 376, which was the Truly

[1] 4 CSR 240-3.163; 4 CSR 240-3.164; 4 CSR 240-20.093; and 4 CSR 240-20.094 (collectively the "Rules").

Agreed To and Finally Passed bill as signed by Governor Nixon. I will discuss the relevance of this fact later. Governor Nixon signed SB 376 in July 2009. It is codified at Section 393.1075 of the Missouri Revised Statutes.

The MEEIA is a laudable piece of legislation. And the rules we have drafted in support of the MEEIA represent the hard work of our staff and numerous stakeholders. They are to be commended for their efforts. But the issue of lost revenue recovery is of such significance that including provisions allowing for the recovery of lost revenues damages the rules as a whole.

1. The MEEIA does not authorize recovery of lost revenue

The MEEIA sets forth the state's policy "to value demand-side investment equal to traditional investment in supply and delivery infrastructure and allow recovery of all reasonable and prudent *costs* of delivering cost-effective demand-side programs." Mo. Rev. Stat. § 393.1075.3 (2010) (emphasis supplied). The MEEIA further provides that "the [C]ommission may develop *cost* recovery mechanisms to further encourage investments in demand side programs[.]" Mo. Rev. Stat. § 393.1075.5 (2010) (emphasis supplied).

The Commission is instructed to support the state's policy by providing timely cost recovery for utilities; by ensuring that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that *sustains or enhances utility customers' incentives* to use energy more efficiently; and by providing timely earnings opportunities associated with cost effective measurable and verifiable efficiency savings. Mo. Rev. Stat. § 393.1075.3 (1) – (3) (2010).

There is no language in the language I have cited or anywhere else in the statute that authorizes the recovery of lost revenue. Lost revenue is neither a *cost* of providing service nor a *cost* of providing energy efficiency programs.

The absence of any such language is telling. What is also telling is that the introduced version of SB 376 included language allowing for "recovery of lost sales attributable to approved energy efficiency programs" and "allowing the utility a fixed investment recovery mechanism to recover lost margins[.]" See Senate Bill No. 376, First Regular Session, 95th General Assembly, Read First Time February 16, 2009.

In the Truly Agreed To and Finally Passed version of the bill, signed by the Governor and codified at Section 393.1075, this language is conspicuously absent. While this absence is not dispositive of the General Assembly's intent, it is instructive. Had the General Assembly intended to authorize recovery of lost revenues, it certainly could have kept the language that appears in the introduced version of SB 376. In certain circumstances, such as this one, "omissions should be understood as exclusions." See, Angoff v. M and M Mgmt. Corp., 897 S.W.2d 649, 655 (Mo. Ct. App. 1995)

2. Allowing for recovery of lost revenue does not solve the problem

Encouraging energy efficiency, on the one hand, requires the utility to act counter to its financial interests. So, some form of lost revenue recovery mechanism is necessary, proponents assert, in order to remove this disincentive. But allowing for recovery of lost revenues does nothing to remove the incentive to increase revenues by increasing sales.

The lost revenue recovery mechanism is supposed to ameliorate the effects of any lost revenues specifically tied to measured and verified energy efficiency programs. The

problem, however, is that the evaluation, measurement, and verification program will likely lead to increased contention as parties litigate the accuracy of the evaluation, measurement, and verification program. Moreover, every indication is that measuring and verifying lost revenues associated with specific energy efficiency programs is a highly imprecise undertaking. In addition to leading to more contentious rate cases, this imprecision allows opportunity for mischief in measuring and verifying the savings associated with a particular program. This is particularly true where, as is the case with the Rules, the utility is charged with evaluating, measuring, and verifying its own program.

Only eight states currently use some form of lost revenue recovery mechanism.[2] More states are looking to some form of revenue decoupling as a preferred method of addressing the disincentives associated with promoting energy efficiency. I do not, at this time, express an opinion about the desirability of decoupling. I only note that it provides a more certain means of removing the so-called "throughput incentive," that is the incentive to increase revenues by increasing sales. Additionally, performance incentives are another effective alternative for addressing the disincentives associated with promoting energy efficiency.

Lost revenue recovery mechanisms are also difficult to administer as the ability to properly implement such mechanisms depends to a significant degree on robust evaluation, measurement, and verification. And since any recovered lost revenues are

[2] Colorado, Kentucky, Montana, North Carolina, Ohio, Oklahoma, South Carolina, and Wyoming. Utah is considering a lost revenue recovery mechanism. As of this writing, the status of that mechanism is uncertain. See The Edison Foundation's Institute for Electric Efficiency, "State Electric Efficiency Regulatory Frameworks," July 2010, accessed at http://www.electric-efficiency.com/issueBriefs/IEE_StateRegulatoryFrame_0710.pdf, on February 7, 2011.

only those directly attributable to the energy efficiency program, the utility continues to have the incentive to increase revenues through increased sales.

In addition to the difficulty associated with administering an effective evaluation, measurement, and verification program, the use of the lost revenue recovery mechanism gives rise to many other questions. How are revenues attributable to energy efficiency programs distinguished from decreased sales attributable to any other factor? How are potential off-system sales taken into account that are realized as a result of any energy efficiency programs? Will customers reap the benefits of increased energy efficiency and decreased consumption in the way of lower bills if the "lost revenues" are ultimately recovered? Will customers' incentives to use energy more efficiently be sustained or enhanced, as instructed by the MEEIA? There are too many unanswered questions to leave one comfortable that allowing for recovery of lost revenues will advance the overarching goals of promoting energy efficiency or inure any great benefits to ratepayers.

3. Conclusion

Energy efficiency measures are to be encouraged and implemented to the greatest degree possible. Energy efficiency is a proven, cost-effective means of addressing many problems: global climate change caused by green house gas emissions; air quality issues; consumption and depletion of finite fossil fuel resources; and energy independence and security.

The policy of the state is to value demand side investments equal to other investments. Utilities' financial incentives are to be aligned with helping customers use

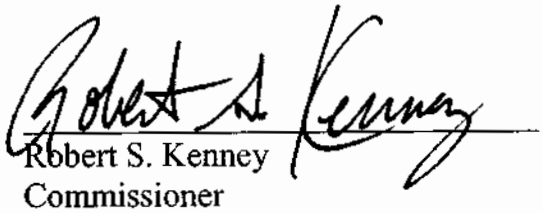
energy more efficiently and in a manner that sustains and enhances their incentives to use energy more efficiently. The MEEIA makes these pronouncements and charges the commission with drafting rules in support of these worthy goals. The MEEIA gives the commission latitude in promulgating rules supportive of its goals. But the MEEIA does not authorize recovery of lost revenues.

Moreover, recovery of lost revenues does not address the problem that it sets out to resolve. While it provides revenue stability for the utility, it does not remove the incentive to promote increased sales. Finally, it is hard to see how allowing for recovery of lost revenues supports or enhances the customers' incentives to use energy more efficiently.

I wholeheartedly and enthusiastically support the overarching principles of the MEEIA. And I recognize the need to align utilities' financial incentives with helping customers decrease consumption of their product. But I do not believe that allowing for recovery of lost revenues achieves this alignment.

For all of the foregoing reasons I dissent.

Respectfully submitted,



Robert S. Kenney
Commissioner

Dated this 9th day of February 2011,
at Jefferson City, Missouri

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 393.1075, RSMo Supp. 2010 and sections 386.040 and 386.250, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-3.164 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 15, 2010 (35 MoReg 1629–1646). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule was held December 20, 2010, and the public comment period ended December 15, 2010. The commission received a number of written comments from seventeen (17) entities, many of which were duplicated or echoed from the various entities and involve the same sections or subsections of the proposed rule. Consequently, these comments have been consolidated into eight (8) central comments, which are addressed below. At the public hearing, seventeen (17) witnesses testified. The entities filing comments were AARP, Union Electric d/b/a Ameren Missouri (Ameren Missouri), the Consumers Council of Missouri (CCM), Empire District Electric Company (Empire), KCPL Greater Missouri Operations Company (GMO), Great Rivers Environmental Law Center (GRELC), Kansas City Power and Light Company (KCPL), Missouri Department of Natural Resources (MDNR), Missouri Energy Development Association (MEDA),[1] Missouri Energy Group (MEG), Missouri Industrial Energy Consumers (MIEC),[2] National Resources Defense Council (NRDC), Office of the Public Counsel (OPC), OPOWER, Inc. (OPOWER), Renew Missouri, staff of the Missouri Public Service Commission (staff), Sierra Club, Walmart Stores East, LP, and Sam's East.

All of the comments were generally in support of a rule to implement demand-side programs and demand-side programs investment mechanisms (DSIMs), but many had suggestions for specific changes to the proposed rule and raised concerns regarding the timing of authorizing DSIMs and whether those mechanisms could include recovery of lost revenues. It should be noted that this proposed rule operates in conjunction with proposed rules 4 CSR 240-3.163, 4 CSR 240-20.093, and 4 CSR 240-20.094. All of these rules were promulgated to implement section 393.1075, RSMo, the Missouri Energy Efficiency Investment Act (MEEIA). Any comments directed towards 4 CSR 240-3.164 may be interrelated with these other proposed rules, and the interplay between these proposed rules may need to be addressed in the context of this order or rulemaking; however, in and of itself, this rule specifically addresses electric utility demand-side program filing and submission requirements. It should also be noted that while comments were directed at specific sections and subsections of the rule, due to changes in the proposed rule those number citations may not match the final numbering of the sections and subsections of the rule.

[1] The MEDA members include KCPL, GMO, Empire, and Ameren Missouri.

[2] MIEC members include Anheuser-Busch Companies, Inc., BioKyowa, Inc., The Boeing Company, Doe Run, Enbridge, Ford Motor Company, General Motors Corporation, GKN Aerospace, Hussmann Corporation, JW Aluminum, MEMC Electronic Materials, Monsanto, Procter & Gamble Company, Nestlé Purina PetCare, Noranda Aluminum, Saint Gobain, Solutia, and U.S. Silica Company.

COMMENT #1: General Changes in Relation to Alleged Single-Issue Ratemaking. AARP, CCM, MIEC, OPC, and staff all believe that sections or subsections of the interrelated MEEIA rules (4 CSR 240-3.163, 4 CSR 240-20.093, and 4 CSR 240-20.094) allowing a rate adjustment outside of a general rate case would constitute unlawful single-issue ratemaking. AARP, CCM, and OPC state it is their belief that the legislature purposely deleted any language in SB 376 (the legislation ultimately codified as section 393.1075, RSMo) that would have allowed for changes to a demand-side program investment mechanism in between general rate cases. No specific sections or subsections of this rule were identified by these entities that would require change based upon this comment. However, to the extent that any of these provisions could be implicated by the language of the interrelated rules, the commission will again address this issue.

MEDA, MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC, on the other hand, believe that the language in section 393.1075.3 and .5, RSMo, mandating the commission to provide timely cost recovery and timely earnings opportunities by developing cost recovery mechanisms without limitation allows the commission to establish and approve demand-side programs outside the framework of a general rate case. Section 393.1075.11, RSMo, states the commission "may adopt rules and procedures . . . as necessary, to ensure that electric corporations can achieve the goals of this section." Additionally, these entities point out that section 393.1075.13, RSMo, requires the use of a separate line item for charges attributable to demand-side programs, which is consistent with other billing elements that are adjusted outside of a general rate case. Taxes, fuel adjustment clauses, purchased gas adjustments, and infrastructure system replacement surcharges are all billed in this fashion. While language in the original version of SB 376 providing for a "cost adjustment clause" was removed, the legislature added "timely cost recovery," broadening the commission's discretion with developing cost recovery mechanisms.

RESPONSE: The commission believes that the express language in section 393.1075, RSMo, unequivocally requires the commission provide timely cost recovery for utilities when effectuating the declared social policy of valuing demand-side investments equal to traditional investments in supply and delivery infrastructure. MEEIA contemplates non-traditional investments and mandates timely cost recovery. The language of the proposed rule does not establish any specific type of demand-side investment mechanism (DSIM). Instead, the proposed rule allows the maximum latitude for creating Demand-Side Programs and the associated DSIMs while allowing for periodic adjustments in conformity with the language in the statute. The argument that the proposed rule would in and of itself authorize single-issue ratemaking is unfounded and premature. Until an exact DSIM is established, there is no way to claim that original implementation or any periodic adjustments would constitute single-issue ratemaking.

Additionally, the statutory language from which the prohibition against single-issue ratemaking is derived originates in section 393.270.4, RSMo. The statute is permissive. It allows the commission the discretion to examine all facts that the commission believes are relevant. There is no set statutory requirement for how many or what type of facts or factors the commission must consider when making its determination. Indeed, the legislature has delegated its authority to the commission, being the expert agency charged with making these determinations, to decide what factors must be examined when determining the price to be charged for electricity. The commission will make no changes to the language identified by these comments in the proposed rule or to any other language in the rule that would be related to the issue raised in these comments.

COMMENT #2: Lost Revenue Recovery. AARP, CCM, OPC, MIEC, and staff believe that the lost revenue recovery mechanism

provisions of the draft rules are unlawful because those provisions are not authorized by statute. These entities believe that lost revenue does not fit in a cost category. The subsections of this rule identified by these entities that would require change based upon this comment are (1)(L), (1)(M), and (1)(P).

MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC comment that lost revenue recovery is not cost recovery or an earnings opportunity. These entities believe that under the mechanism for recovering lost revenues in the proposed rule, utilities would continue to see higher levels of revenue recovery with higher sales. Therefore, they believe the utility will find itself facing the same conflict it currently faces at the prospect of taking actions or supporting policies to save energy and thereby save their customers money, knowing that such actions would cause their shareholders to miss out on the earnings from higher sales. These entities refer to the incentive to maintain higher sales as the "throughput incentive" and believe this is a strong disincentive for utilities to invest in energy efficiency or to support energy saving policies and measures outside their control.

MEG objects to any language that would allow a lost revenue recovery mechanism, not because it is unlawful but because it believes that reduced costs associated with reduced sales will balance out. MEG also believes that a lost recovery mechanism is inconsistent with the way other charges are handled. According to MEG, a utility believes that energy efficiency programs will reduce sales and reduce contributions to fixed costs, but, using that same reasoning, every time the utility adds a customer, it increases sales and contributions to fixed costs. Consequently, MEG concludes, there should be a refund to customers in any class of ratepayers every time a customer is added. MEG also believes there is no way to determine the actual effect of the various energy efficiency programs.

In addition to the other comments made, staff states that only eight (8) other states allow recovery of lost revenues. According to staff, other states that have had such a recovery mechanism in the past have abandoned it. Staff claims that the movement away from direct reimbursement for lost revenues is likely due to several factors including the fact that the approach is vulnerable to "gaming" by over-claiming savings, that it typically leads to very contentious reconciliation hearings as parties argue about the measurement of savings, and that it does not do anything to address the utility disincentive regarding broader energy efficiency policies beyond the specific program addressed with the mechanisms. Staff notes that other commissions have addressed this issue either through decoupling mechanisms and/or performance incentives. Staff recommends the "throughput incentive" be addressed through the utility incentive component of a DSIM.

MEDA believes that section 393.1075.3, RSMo, mandates recovery of all reasonable and prudent costs and requires the commission to ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently. MEDA members comment that unless a utility's lost revenues are included in the DSIM or other recovery mechanism, there will always be a financial bias against fully utilizing demand-side management programs that result in the reduction of a utility's revenues.

RESPONSE: Section 393.1075.3, RSMo, requires the commission to "allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs." Additionally, section 393.1075.3(2), RSMo, requires the commission to ensure that "utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently." Section 393.1075.5, RSMo, states the commission "may develop cost recovery mechanisms to further encourage investment in demand-side programs . . ." Lost revenue is a cost of delivering cost-effective demand-side programs, and the proposed rule, in conjunction with the interrelated proposed rules, i.e., 4 CSR 240-3.163, 4 CSR 240-20.093, and 4 CSR 240-20.094, require evaluation, measurement, and verification (EM&V). Any request for recovery of lost revenue will have to be verified and approved by the commission prior to recovery.

At the rulemaking hearing on December 20, 2010, several participants commented that decoupling could prevent over- and under-earning and that it might present a better long-term solution than allowing recovery of lost revenues. However, section 393.1075.5, RSMo, requires the commission to conclude a docket studying any rate design modification to those currently approved by the commission prior to promulgating an appropriate rule in that regard. Decoupling represents such a change in rate design, and no docket has been opened at this time to fully explore this or other possible changes. The commission has been directed by the legislature to implement section 393.1075, RSMo, and while this proposed rule may ultimately be an intermediary step to decoupling or other changes in rate design models, promulgating a lost revenue recovery mechanism is authorized by MEEIA and, with verification methods in place, the potential for possible "gaming of the system" is minimized. The commission will make no changes to the language identified by these comments in the proposed rule or to any other language in the rule that would be related to the issue raised in these comments.

COMMENT #3: Definition of Lost Revenue. A number of participants raised an issue concerning the issue of how the proposed rule defines lost revenue. Thus, should the commission include provisions for recovery of lost revenues, these entities debate how "lost revenues" should be defined.

MEDA believes that if the commission is going to allow recovery of lost revenue, the definition of "lost revenue" should be modified to conform to the definition included in 4 CSR 240-22.020(38). MEDA sees no reason to have differing definitions in the commission's regulations.

Staff, on the other hand, does not believe that the Chapter 22 definition is appropriate because:

1) The language as drafted is "permissive" in nature and provides for the opportunity for recovery of lost revenues, rather than a guarantee. The proposed MEDA language is more explicit regarding the ability to recover lost revenues;

2) Staff opposes MEDA's proposed use of Chapter 22's definition of lost revenue, because the Chapter 22 definition is used exclusively to exclude lost revenues from the definitions of annualized costs for end-use measures, from the definition of costs for the utility cost test, and from the definition of costs for the total resource cost test. Chapter 22 does not contemplate the use of its definition of lost revenue for any other purposes, and it should not be assumed to be an appropriate definition for the MEEIA rules; and

3) The MEDA language also removes the requirements for evaluation, measurement, and verification (EM&V) of demand-side management (DSM) program results prior to recovery of lost revenue and, therefore, allows for recovery of lost revenues on a prospective basis without any measurement and verification of DSM program results by an independent evaluator. Staff believes that if recovery of lost revenue is included in the MEEIA rules, measurement and verification of lost revenues should be required and should only be accomplished through independent EM&V on a retrospective basis. Lost revenues are based on energy usage that did not occur. In staff's opinion, it is not appropriate to increase customer's rates on guesses as to what the customers who participated in the programs would have used absent the programs without a rigorous EM&V conducted by an independent evaluator.

Staff recommends clarifying the definition of "lost revenues." Staff also proposes changes in the language of the interrelated rule, 4 CSR 240-20.093(2)(G).

Staff's proposed change would apply to subsection (1)(Q) of this proposed rule and the following subsections of the interrelated proposed rules: 4 CSR 240-3.163(1)(P), 4 CSR 240-20.093(1)(Y), and 4 CSR 240-20.094(1)(U).

RESPONSE AND EXPLANATION OF CHANGE: The commission believes staff's proposed revision to the current definition of lost revenue is appropriate and rejects MEDA's proposed revision for the reasons stated by staff. The commission will modify 4 CSR 240-3.163(1)(Q), 4 CSR 240-3.164(1)(M), 4 CSR 240-20.093(1)(Y), and 4 CSR 240-20.094(1)(U) accordingly.

COMMENT #4: Definitions of Potentials. MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC believe the definition of "economic potential" in subsection (1)(H), "maximum achievable potential" in subsection (1)(N), "realistic achievable potential" in subsection (1)(T), and "technical potential" in subsection (1)(W) should be deleted and replaced with the nationally recognized definitions for technical, economic, achievable, and program potential developed through a public-private partnership of experts and contained in the National Action Plan for Energy Efficiency (NAPEE). Those definitions are found on pages 2–4 of the document entitled "Guide for Conducting Energy Efficiency Potential Studies" (http://www.epa.gov/cleanenergy/documents/suca/potential_guide.pdf).

According to these stakeholders, the definitions of potential in the proposed rule, taken together, could significantly and adversely influence commission review of progress toward the legislative goal of "achieving all cost-effective demand-side savings" as well as future utility conduct of potential studies. The core distinction in NAPEE's Guide is between "achievable potential" and "program potential." As NAPEE uses the terms, "achievable potential" takes expected program participation into account and is the reference point for considering various levels of "program potential" that are based on different levels of utility funding and implementation. This is in contrast to an assumption of an absolute distinction between "maximum" and "realistic" achievable potential that introduces an analytic weakness and which does not acknowledge that there can be many levels of "achievable potential" based on the level of funding and aggressiveness of implementation that the company elects to pursue. Estimates from a market potential study are highly variable, depending on the measures included in a study, the range of customer incentives considered in the study questionnaires, and the assumptions used to calculate energy savings forecasts. Using the current definitions in the proposed rule could result in the following adverse consequences: 1) the draft language could limit the commission's view of the potential for cost-effective demand-side savings to the level of funding and aggressiveness of implementation that the company elects to assume in its potential study; and 2) future utility potential studies could focus unduly on establishing a single level of "realistic" achievable potential, limiting their study of the range of options under different levels of program implementation. This would be most likely to occur if the rule requires the utility to conduct potential studies but fails to establish adequate standards for conducting them.

RESPONSE: Substituting the current definitions of these terms would create a very material change to the current proposed MEEIA rules (specifically 4 CSR 240-20.094(2)(A)), because the NAPEE definition of achievable potential is equivalent to the current proposed MEEIA definition of maximum achievable potential. NAPEE defines these terms as follows:

Achievable potential is the amount of energy use that efficiency can realistically be expected to displace assuming the most aggressive program scenario possible (e.g., providing end-users with payments for the entire incremental cost of more efficiency equipment). This is often referred to as maximum achievable potential. Achievable potential takes into account real-world barriers to convincing end-users to adopt efficiency measures, the non-measure costs of delivering programs (for administration, marketing, tracking systems, monitoring and evaluation, etc.), and the capability of programs and administrators to ramp up program activity over time.

Program potential refers to the efficiency potential possible given specific program funding levels and designs. Often, program potential studies are referred to as "achievable" in contrast to "maximum achievable." In effect, they estimate the achievable potential from a given set of programs and funding. Program potential studies can consider scenarios ranging from a single program to a full portfolio of programs. A typical potential study may report a range of results based on different program funding levels.

The use of the NAPEE definitions will result in the most aggressive DSM program scenarios possible (e.g., "providing end-users with payments for the entire incremental cost of the most efficient equipment") while maximum achievable potential in the current proposed MEEIA rules assumes ". . .incentives that represent a very high portion of total programs cost and very short customer payback periods. Maximum achievable potential is considered the hypothetical upper boundary of achievable demand-side savings potential, because it presumes conditions that are ideal and not typically observed."

As noted in the NAPEE definition of achievable potential, changing the definitions assumes "the most aggressive program scenario possible." The commission believes substituting the definitions will result in an expectation of very high goals that are unrealistic or unattainable in the early stages of implementing the MEEIA. The commission will not substitute or change the current definitions of these terms.

Finally, the commission notes that section (7) of the proposed rule requires the commission to complete a review of the effectiveness of this rule no later than four (4) years after the effective date at which time it may initiate rulemaking proceeding to revise the rule. Upon review, the commission will have the opportunity to revisit this issue to determine if the current definitions require modification.

COMMENT #5: Definition of Probable Environmental Cost. MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC state that the statutory definition of the total resource cost test (TRC) includes "probable environmental compliance costs"; section 393.1075.2(6), RSMo. The proposed rules do not define or even use this term but incorporate instead the definition of "probable environmental costs" from the proposed integrated resource planning (IRP) rule, 4 CSR 240-22.020(46). See 4 CSR 240-3.163(1)(Q), 4 CSR 240-3.164(1)(R), 4 CSR 240-20.093(1)(Y), and 4 CSR 240-20.094(1)(V). The proposed rule 4 CSR 240-22.040(2)(B) does not provide an adequate method of calculating environmental compliance costs. It is restricted to future costs associated with a selected list of pollutants which, in the judgment of utility decision makers, could have a significant effect on rates. SB 376 plainly means to include all costs, including present costs, and a more objective assessment, not one based on "subjective probability" in certain individuals' judgment. The commission needs to include a methodology in its rules for calculating these costs, which might include an environmental cost adder expressed in dollars or, as in Ohio, a percentage externality factor. Relying on the IRP rule to implement SB 376 has the effect of adding criteria such as the subjective judgment of utility decision makers that, as discussed above, are not in the statute.

Related to these concerns, OPC proposed changes to the definition of the TRC as follows: Total resource cost test or TRC means the test that compares the avoided utility costs (including probable environmental compliance costs) to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver and evaluate each demand-side. The present value of the program avoided utility benefits shall be calculated over the projected life of the measures installed under the program.

RESPONSE AND EXPLANATION OF CHANGE: The concerns raised by these stakeholders regarding the definitions and relationships between the terms TRC, avoided cost or avoided utility cost, and probable environmental compliance cost are interrelated to OPC concerns with the definition of TRC echoed in comment #17 to proposed rule 4 CSR 240-20.094. Consequently, the commission will address both of these concerns in its response to each comment.

The current proposed rules 4 CSR 240-3.163(1), 4 CSR 240-3.164(1), 4 CSR 240-20.093(1), and 4 CSR 240-20.094(1) have the same definitions for avoided cost or avoided utility cost, probable environmental cost, and total resource cost test.

Section 393.1075(6), RSMo, defines "total resource cost test" as a test that compares the sum of avoided utility costs and avoided probable environmental compliance costs to the sum of all incremental costs of end-use measures that are implemented due to the program, as defined by the commission in rules.

The commission proposes changes to the definitions in 4 CSR 240-3.163(1)(C), (R), and (T); 4 CSR 240-3.164(1)(A), (R), and (X); 4 CSR 240-20.093(1)(F), (Z), and (DD); and 4 CSR 240-20.094(1)(D), (W), and (Y) to address the concerns expressed by OPC and by MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC.

Additionally, the commission chooses to not include a methodology in its MEEIA rules for calculating probable environmental compliance costs. The commission notes that section (7) of the proposed rule requires the commission to complete a review of the effectiveness of this rule no later than four (4) years after the effective date at which time it may initiate rulemaking proceeding to revise the rule. Upon review, the commission will have the opportunity to revisit this issue to determine if it is appropriate to include a methodology. The commission's actions on the definitions of avoided cost, probable environmental compliance cost, and total resource cost test are consistent with the commission's actions regarding the interaction between this rule and 4 CSR 240-22 Electric Utility Resource Planning.

COMMENT #6: Definition of Staff. Staff believes that the word "staff" in 4 CSR 240-3.164(1) is too broadly defined in the proposed rule. The definition of staff in each of the draft rules would include attorneys in the Office of the General Counsel other than the general counsel who are not in the Office of the Staff Counsel. Staff is not certain that result is intended. The definitions appear at 4 CSR 240-3.163(1)(S), 4 CSR 240-3.164(1)(V), 4 CSR 240-20.093(1)(BB), and 4 CSR 240-20.094(1)(X).

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff. Not only did the commission not intend to include attorneys in the Office of the General Counsel other than the general counsel who are not in the Office of the Staff Counsel, but the commission will conform the definition of "staff" to that being formulated in the commission's Chapter 2 revisions in order to maintain consistency throughout all of its rules. Staff will be redefined.

COMMENT #7: The Interplay Between This Rule and 4 CSR 240-22 Electric Utility Resource Planning. MDNR, NRDC, Sierra Club, GRELC, and Renew Missouri have expressed concerns regarding the interplay between the proposed rules to implement MEEIA and the commission's Chapter 22 rules involving integrated resource planning (IRP). These concerns implicate paragraph (2)(B)3. and 4 CSR 240-20.094(3)(A)3. Consequently, the commission will address those comments in both rules.

MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC would like for paragraph (2)(B)3. and 4 CSR 240-20.094(3)(A)3. to be eliminated. Rule 4 CSR 240-20.094(3)(A)3. says the PSC must approve programs that pass the total resource cost test, but it adds the following condition: that the programs "are included in the electric utility's preferred plan or have been analyzed through the integration process required by 4 CSR 240-22.060 to determine the impact of the demand-side programs and program plans on the net present value of revenue requirements of the electric utility." However, the criterion of the MEEIA is the cost effectiveness of demand-side programs; see section 393.1075.3–4, RSMo. Under the latest Chapter 22 rewrite, the primary criterion is the minimization of utility costs, but utilities may use other critical factors; see 4 CSR 240-22.010(2). The most cost effective demand-side portfolio could fail the IRP tests if it were packaged with a bad set of supply-side resources.

Selection of a preferred resource plan (PRP) is contingent on the policy objectives and performance measures and also on the judgment of utility decision-makers; see 4 CSR 240-22.070(1). While it would appear from 4 CSR 240-22.070(1)(C) that a PRP will maximize demand-side resources, it is not clear how the winnowing of ARPs assembled under 4 CSR 240-22.060 will automatically yield a PRP with the most cost-effective demand-side portfolio; the minimally compliant ARP of 4 CSR 240-22.060(3)(A)1. and the optimally compliant ARP of 4 CSR 240-22.060(3)(A)5. could both fail during the analysis prescribed in 4 CSR 240-22.060(4)–(7). Furthermore, even the demand-side component of the PRP is subject to the judgment of utility decision-makers; they decide whether the PRP is in the public interest and achieves state energy policies; see 4 CSR 240-22.070(1)(C). Lowest present value of revenue requirements (PVRR), IRP policy objectives, performance measures, critical uncertain factors, and decision-makers' judgment are all criteria absent from the MEEIA.

According to MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC, there is a disconnect between 4 CSR 240-22.060 and 4 CSR 240-22.070: 4 CSR 240-22.060(3)(A)1.–5. prescribes a special set of alternative resource plans for renewable and demand-side resources. These include a minimally compliant demand-side plan (the "compliance benchmark"), an "aggressive" plan defined as maximum technical potential (which is an academic exercise), and an optimally compliant plan (minimal compliance with legal mandates but may be something more).

It's unclear what happens to these plans. They must go through the analysis of 4 CSR 240-22.060(4)–(7). The preferred resource plan must use demand-side resources to the "maximum" amount that complies with legal mandates; see 4 CSR 240-22.070(1)(C). This differs from both the minimal compliance benchmark ARP and the "optimal" ARP. Indeed, 4 CSR 240-22.070 does not even say that the PRP must be one of the ARPs in 4 CSR 240-22.060.

According to MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC, the status of the PRP is uncertain. The PRP is a moving target. It can change at any time and be replaced by a contingent plan if the PRP ceases to be appropriate for any reason; see 4 CSR 240-22.070(4). The PRP can become obsolete if it ceases to be consistent with the utility's business plan or acquisition strategy; see 4 CSR 240-22.080(12). A utility can get variances from the rule; see 4 CSR 240-22.080(13). A utility may request action in other cases that is inconsistent with the PRP as long as it provides a detailed explanation; see 4 CSR 240-22.080(17). Under the MEEIA rule, 20.094(3)(A)3., the utility can disregard the PRP, but whatever programs it offers must first go through 4 CSR 240-22.060 integration, which still involves all the criteria itemized above that are not in the MEEIA.

According to MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC, MEEIA outranks Chapter 22. If the IRP rule is to perform that role, it must be modified to accommodate the MEEIA. SB 376 is a delegation of specific rulemaking authority to achieve the MEEIA's purposes; see section 393.1075.11, RSMo. Chapter 22, by contrast, has no specific legislative authority. Its status as an internal commission rule is reflected in the limited, procedural nature of the commission's review of utility IRPs; only deficiencies in Chapter 22 compliance are reviewable, not the substance of the plans; see 4 CSR 240-22.080(7), (8), and (16).

According to MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC, MEEIA, if the commission subordinates the MEEIA to Chapter 22, it will be imposing criteria not prescribed by the legislature and will be unlawful. The commission cannot use its general rulemaking powers under sections 386.250(6) and 393.140(11), RSMo, to make rules inconsistent with the MEEIA. To do so would be to exercise a legislative function in violation of the separation of executive from legislative powers; see Mo. Constitution Article II, section 1. Chapter 22 and the MEEIA can only be harmonized by ensuring that a demand-side portfolio that satisfies the criteria of the MEEIA automatically becomes part of the preferred resource plan, not the other way around.

The staff of the Missouri Public Service Commission responded to these concerns in the following manner:

Various groups expressed opposition regarding the requirement that proposed demand-side programs be analyzed through the integration analysis process required by Chapter 22 Electric Utility Resource Planning. Some of the concerns expressed by these stakeholder organizations were that the process is a burdensome requirement and that it may not result in a set of demand-side resources that are adequate to meet a MEEIA goal of achieving all cost-effective demand-side savings; therefore, the results of the Chapter 22 integration analysis process should not be a limiting factor in the approval of the demand-side programs submitted under the proposed 4 CSR 240-20.094 rule. These stakeholder groups contend that the total resource cost test (TRC) should be an adequate measure, by itself, to determine which demand-side programs are proposed and approved. Staff does not agree with the concerns of these stakeholder groups.

According to staff, Missouri's Chapter 22 Electric Utility Resource Planning rules are expected to continue to result in an ongoing and dynamic electric utility resource planning process to "optimize" both supply-side resources and demand-side resources at the lowest cost to electricity ratepayers while taking into consideration risk and uncertainty associated with critical uncertain factors such as future customer loads (for energy and for demand), future fuel and purchased power prices, future economic conditions, future legal mandates, and new technology. Simply using the TRC test to determine which demand-side programs are proposed and approved does not give any consideration to risk and uncertainty associated with critical uncertain factors. Proposed rule 4 CSR 240-20.094(3)(A) requires that proposed demand-side programs "are included in the electric utility's preferred plan or have been analyzed through the integration process required by 4 CSR 240-22.060 to determine the impact of the demand-side programs and program plans on the net present value of revenue requirements of the electric utility." Staff supports this requirement as it places demand-side resources on an equal basis with supply-side resources. See section 393.1075.3, RSMo. The requirement that proposed demand-side programs be analyzed through the integration analysis process is consistent with MEEIA. Moreover, the requirement in proposed rule 4 CSR 240-20.094(3)(A) indicates that the integration analysis should be completed and filed as required by 4 CSR 240-3.164(2)(B)3., but does not state that the results would necessarily be a limiting factor in the approval of demand-side programs.

Finally, staff would like to clarify for the commission that should the electric utility determine that it wants to propose demand-side programs or program plans which are not included in the electric utility's preferred resource plan, a completely new Chapter 22 analysis and new preferred resource plan are not necessary. The only requirement of 4 CSR 240-20.094(3)(A) is that demand-side programs and program plans "have been analyzed through the integration process required by 4 CSR 240-22.060 to determine the impact of the demand-side programs and program plans on the net present value of revenue requirements of the electric utility." Further, such integration analysis to determine the impact of individual demand-side programs on the net present value of revenue requirements of the electric utility have been requested by staff during 2010 on several occasions for demand-side programs which were not in the preferred resource plans of the individual electric utilities. The electric utilities performed the integration analysis, reported the incremental change to the net present value of revenue requirements, and communicated to staff that the integration analysis was not burdensome taking no more than a day or two to set up and run the integration analysis with the proposed demand-side program.

RESPONSE: The commission agrees with its staff. MEEIA states, "the commission shall consider the total resource cost test 'a' preferred cost-effectiveness test." MEEIA does not state the total resource cost test shall be "the" cost-effectiveness test or even (as stated in the formal comments of the stakeholder group) "the primary" cost-effectiveness test. So clearly there is additional opportunity for the commission to choose a more comprehensive process to determine what demand-side resources constitute all cost-effective demand-side savings than simply using the total resource cost test. If the commission stops with the results of the TRC, then demand-side analysis is given preferential treatment over supply-side analysis which is contrary to the MEEIA.

While "a" goal of MEEIA is to achieve all cost-effective demand-side savings, the stated fundamental objective of the proposed Chapter 22 rules is to provide the public with energy services that are safe, reliable, and efficient, at just and reasonable rates, in a manner that serves the public interest. This objective further enhances the MEEIA and is also consistent with sound public policy. This objective requires that the utility—

A. Consider and analyze demand-side resources and supply-side resources on an equivalent basis;

B. Use minimization of the present worth of long-run utility costs as the primary selection criterion in choosing the preferred resource plan; and

C. Explicitly identify and, where possible, quantitatively analyze any other considerations which are critical to meeting the fundamental objective of the resource planning process, but which may constrain or limit the minimization of the present worth of expected utility costs. … These considerations shall include, but are not necessarily limited to, mitigation of risks associated with critical uncertain factors (such as future electricity loads, future economic conditions, future fuel and purchased power prices, and future legal mandates including environmental regulations). Finally, Chapter 22 risk analysis also considers the mitigation of rate increases associated with alternative resource plans.

The stakeholder group is suggesting that the total resource cost test is the only analysis needed to determine all cost-effective demand-side savings. The TRC may use as few as a single avoided cost amount for a year. Chapter 22 uses the total resource cost test to screen demand-side resources. Chapter 22 then requires further analysis of all resources that have passed screening analysis (both supply-side resources and demand-side resources) through integration analysis. The integration process required by Chapter 22 requires the utilities to look at all eight thousand seven hundred sixty (8,760) hours of the year. The demand-side and supply-side resources that best meet the load requirements of all eight thousand seven hundred sixty (8,760) hours each year are included in the preferred resource plan. The integration process is followed by risk analysis and finally strategy selection by the utility's decision makers. The programs that survive this rigorous screening should be the programs for which the utilities' request the commission's approval and receive "non-traditional" ratemaking treatment. These programs are also the most likely to be the best use of the ratepayers' money.

While this stakeholder group asserts that it is inappropriate that the judgment of utility decision makers be used for the determination of all cost-effective demand-side savings for its utility, ultimately, it is the utility decision-makers who decide which alternative resource plan best meets the Chapter 22 objective for its utility. The utility decision-makers (and not the total resource cost test) decide which DSM programs and demand-side programs investment mechanisms are proposed to the commission. These same utility decision-makers will be accountable for the delivery and performance of their utility's commission-approved DSM programs.

Finally, as staff clarifies, should the electric utility determine that it wants to propose demand-side programs or program plans which are not included in the electric utility's preferred resource plan, a completely new Chapter 22 analysis and new preferred resource plan are not necessary. The only requirement is that the programs and program plans be analyzed through the integration process required by 4 CSR 240-22.060.

The commission will make no changes to the language identified by these comments in the proposed rule or to any other language in the rule that would be related to the issue raised in these comments.

COMMENT #8: Specific Filing Requirements. During the rulemaking hearing, OPC incorporated by reference its "red-lined" version of the proposed rules and stated it supported all of the recommended changes contained in that July 23, 2010 filing. In that filing OPC proposed several changes to 4 CSR 240-3.164 (not already addressed). OPC states that this additional language should be added to 4 CSR 240-3.164 to provide clarity and consistency with the statutory language in MEEIA.

OPC recommends the following addition of 4 CSR 240-3.164(2)(C)12.:

12. Any market transformation elements included in the program and and an EM&V plan for estimating, measuring, and verifying the energy and capacity savings that the market transformation efforts are expected to achieve.

OPC recommends the following changes to 4 CSR 240-3.164(2)(E) and the addition of 4 CSR 240-3.164(2)(F):

(E) Demonstration and explanation of efforts made by the utility to include initiatives that are expected to achieve substantial program participation by hard to reach customers.

(F) Demonstration and explanation of efforts made by the utility to increase the cost effectiveness of, and/or level of participation in, its programs through coordinated or jointly delivered programs with other electric and gas utilities.

RESPONSE: Perhaps OPC has not re-visited its comments from July, 23, 2010, but the current version of the proposed rule adopted language in 4 CSR 240-3.164(2)(C)12. is completely identical to the OPC's proposed language. Finding there is no distinction between the current language and the proposed changes, the commission will not amend that paragraph.

With regard to the other proposed amendments, when OPC filed these proposed changes, it stated in its filing: "Many of these changes are self-explanatory (e.g., to provide clarity or consistency with the language in MEEIA) and some are described in the comments below."

The commission notes that while it appreciates OPC's suggestions, the provisions addressing hard-to-reach customers was simply not fully developed at the time of this rulemaking, and the commission declines to add this language at this time. It is possible that the commission will amend this rule in the future to include this and/or other changes. Indeed, 4 CSR 240-3.164(7) mandates a complete review of the effectiveness of this rule no later than four (4) years after the effective date. The Utility-Specific and State-Wide Collaboratives to be mandated in 4 CSR 240-20.094 will be invited to make any suggested modifications during the review process.

With regard to the suggested changes relating to coordinating programs between gas and electric utilities, MEEIA applies to electric utilities and the commission does not believe it is appropriate to require the level of analysis suggested in OPC's proposed change.

4 CSR 240-3.164 Electric Utility Demand-Side Programs Filing and Submission Requirements

(1) As used in this rule, the following terms mean:

(A) Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from demand-side programs' energy savings and demand savings associated with generation, transmission, and distribution facilities including avoided probable environmental compliance costs. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs;

(M) Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net system retail kWh delivered to jurisdictional customers below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V;

(R) Probable environmental compliance cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility's decision-makers, may be imposed at some point within the planning horizon which would result in environmental compliance costs that could have a significant impact on utility rates;

(V) Staff means all personnel employed by the commission, whether on a permanent or contract basis, except: commissioners; commissioner support staff, including technical advisory staff; personnel in the secretary's office; and personnel in the general counsel's office, including personnel in the adjudication department. Employees in the staff counsel's office are members of the commission's staff;

(X) Total resource cost test, or TRC, means the test of the cost-effectiveness of demand-side programs that compares the avoided utility costs to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side program; and

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Chairman's Request for A Status Report Regarding Energy Efficiency Advisory Groups and Collaboratives	)))	File No. AO-2011-0035
In the Matter of the Consideration and Implementation of Section 393.1075, RSMo., The Missouri Energy Efficiency Investment Act	))))	File No. EX-2010-0368

CHAIRMAN CLAYTON'S CONCURRENCE TO FINAL ORDER OF RULEMAKING AND RESPONSE TO STAFF'S REPORT

Issue Date: February 9, 2011

This Commissioner files this opinion in support of the Final Order of Rulemaking in File No. EX-2010-0368, regulations formulating future efforts in energy efficiency investments for Missouri investor-owned utilities. Additionally, this opinion sets out this Commissioner's response to the Staff Report on energy efficiency programs, filed in Case No. AO-2011-0035. These two cases demonstrate the new commitment to energy efficiency in Missouri in empowering utility customers to take control of their energy bills.

In response to my request, the Staff of the Commission filed a report on September 15, 2010, describing the work of each energy efficiency advisory group and collaborative currently addressing the energy efficiency issues facing Missouri's investor-owned electric and natural gas utilities. The report is an impressive compilation of material summarizing the changes in Missouri's efforts at improving the efficient delivery and use of energy. As our nation faces an uncertain future with regard to energy-related priorities, the compilation of material demonstrates the Commission's new commitment to assisting customers and utilities in better managing our energy usage through efficiency programs.

The report highlights that in the past several years, Missouri utilities have gone from a few efficiency programs inconsistently scattered among varying sectors to a comprehensive offering of programs with relatively consistent goals among all utilities. Collaboratives or stakeholder groups have been established for each utility to collect input and formulate policy involving diverse groups, associations and agencies with many people effectively engaged. Program offerings are considered, funded and implemented through the collaboratives, with joint recommendations made to the Commission for approval or rejection in a rate case. Procedures are now in place for resolution of disputes among parties and more information is being distributed to more utility customers than ever before with a wide array of opportunities to reduce energy bills.

The concept of energy efficiency is being embraced as never before. Utilities are now recognizing the benefits of efficient use through reduced demand and energy charges and with less urgency in identifying new sources of electric generation or natural gas acquisition. With increased efficiency of energy use, customers are less vulnerable to natural gas price volatility. Utilities are able to delay or avoid costly new energy sources. Demand Response programs are in place in some territories in attempts to avoid the use of costly gas "peaker plants" in times of high demand, which demonstrate that utilities and customers can benefit from reducing power generation costs. Efficiency programs, in general, are smoothing increases in overall demand with more manageable growth, while avoiding the difficulties of securing new, costly baseload generation.

Customers have much to gain from efficient use of energy. While customers benefit from lower utility costs, customers also receive the direct benefit education and training in learning how energy is used, how it is priced and how they can find ways to reduce consumption, thereby , reducing their monthly energy bills. Customers must have greater options through utility programs in evaluating appliance purchases, understanding heating

and cooling needs, learning about new technologies, and learning that one's quality of life does not have to decrease when energy is used more efficiently. To customers, effective energy efficiency programs translate into empowerment to take control of their energy bills. Rebates, incentives and education provide customers with the necessary tools to change behavior and change how energy decisions are made.

The Commission has recognized that these new programs require adequate funding to be effective. In 2000, total funding for efficiency programs focused primarily on weatherization in the amount of $875,000, involving a couple of utilities. In 2010, funding levels have increased to $53 million, including all 8 utilities. The Commission has determined that natural gas utilities should strive for the target of EE funding at a minimum of .5% of their gross revenues, and all large gas utilities are moving toward this policy target. Electric utilities are taking similar steps at developing and delivering a comprehensive offering of efficiency programs with sufficient funding levels.

Lastly, as Missouri ramps up its efficiency programs, its investments and its increase in knowledge and action for customers, this Commission and future Commissions must be prepared to address an evolving utility industry. If load growth is curtailed, there will be pressure to reevaluate how rates are set. Utilities will push for equal or greater returns on efficiency investments and new models of incentives for utility performance in meeting Commission goals and priorities. Utilities will demand fair treatment if downward pressure is applied to their efforts at increasing sales for greater revenue. On the other hand, consumers will demand that the Commission apply close supervision to new programs, carefully scrutinize new rate making requests and cautiously evaluate any modification to the traditional rate of return regulatory compact. This and future Commissions will be faced with balancing these potentially competing positions to ensure that programs are cost-effective,

deliver benefits to both customers and utilities, and do not inequitably shift risk or cost. These are complicated challenges in a new world of energy delivery.

The Commission is prepared to tackle these issues and has taken additional steps to gather information and set policy. First, the Commission continues its statewide energy efficiency study with a partnering agency, the Missouri Energy Center. It is this Commissioner's hope that realistic, achievable goals can be identified to provide greater assistance to those working on Missouri's energy future. Secondly, the Commission has concluded the formal rulemaking process with regulations stemming from Senate Bill 376, the Missouri Energy Efficiency Act. Through these rules, the Commission addresses a number of significant policy questions to provide clarity and certainty for current and future efficiency programs. The Commission has developed the rules with an eye towards flexibility and the understanding that incentive mechanisms will require careful planning and design. The Commission will need several "attempts" at determining the large-scale benefits and costs upon all stakeholders. Lessons learned from those efforts will provide future commissions with the knowledge to develop programs effectively. The rules certainly contemplate a changing world where the regulator may no longer demand greater sales of energy, but rather strive for decreased usage. How does a utility reduce its sales but maintain profitability? The rules are designed to consider this conundrum.

In conclusion, this Commissioner commends and thanks the staff of the Commission for its efforts in working through challenging and potentially controversial issues. Most Missourians are unaware of the work of the Public Service Commission and even fewer know the dedication, the expertise and the significant work ethic of the PSC staff. This report illustrates the giant steps taken in recent years and the future work that lies ahead. It is my hope and request that a similar report be prepared annually, in a format for easy

consumption, so that the public and Commissioners may understand what we are doing on critically important issues and how those issues evolve in the future.

Therefore, it is my request that the Staff prepares an annual update to its report, in a format acceptable to Staff, every September 15th, and makes that update available to the Commission and the public.

For the foregoing reasons, this Commissioner concurs.

Respectfully submitted,

Robert M. Clayton III
Chairman

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Consideration and	)	
Implementation of Section 393.1075, the	)	Case No. EX-2010-0368
Missouri Energy Efficiency Investment Act	)	

DISSENTING OPINION OF COMMISSIONER ROBERT S. KENNEY

I write to dissent from the majority's Final Orders of Rulemaking regarding the Missouri Energy Efficiency Investment Act.[1] I specifically dissent as it relates to those Rules allowing utilities to recover lost revenue. I dissent because the Missouri Energy Efficiency Investment Act (the "MEEIA" or the "Act"), the statute under which the Commission has authority to promulgate these Rules, does not authorize recovery of lost revenue; I dissent because authorizing recovery of lost revenues does nothing to remove the disincentive it is ostensibly designed to remove; and I dissent because authorizing recovery of lost revenues does not serve the interests of Missouri citizens.

I believe in energy efficiency as a least-cost way of reducing carbon emissions. Along with greater deployment of renewable resources, nuclear energy, and new technologies such as carbon capture and sequestration, energy efficiency measures are a certain and cost-effective way of reducing carbon emissions. Equally as important, energy efficiency measures give utility customers an opportunity to realize savings in their bills.

The MEEIA is the product of Senate Bill No. 376, which was first read February 16, 2009. As with most pieces of legislation, SB 376 as introduced differed from the Senate Substitute for Senate Committee Substitute for SB 376, which was the Truly

[1] 4 CSR 240-3.163; 4 CSR 240-3.164; 4 CSR 240-20.093; and 4 CSR 240-20.094 (collectively the "Rules").

Agreed To and Finally Passed bill as signed by Governor Nixon. I will discuss the relevance of this fact later. Governor Nixon signed SB 376 in July 2009. It is codified at Section 393.1075 of the Missouri Revised Statutes.

The MEEIA is a laudable piece of legislation. And the rules we have drafted in support of the MEEIA represent the hard work of our staff and numerous stakeholders. They are to be commended for their efforts. But the issue of lost revenue recovery is of such significance that including provisions allowing for the recovery of lost revenues damages the rules as a whole.

1. The MEEIA does not authorize recovery of lost revenue

The MEEIA sets forth the state's policy "to value demand side investment equal to traditional investment in supply and delivery infrastructure and allow recovery of all reasonable and prudent *costs* of delivering cost-effective demand-side programs." Mo. Rev. Stat. § 393.1075.3 (2010) (emphasis supplied). The MEEIA further provides that "the [C]ommission may develop *cost* recovery mechanisms to further encourage investments in demand side programs[.]" Mo. Rev. Stat. § 393.1075.5 (2010) (emphasis supplied).

The Commission is instructed to support the state's policy by providing timely cost recovery for utilities; by ensuring that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that *sustains or enhances utility customers' incentives* to use energy more efficiently; and by providing timely earnings opportunities associated with cost effective measurable and verifiable efficiency savings. Mo. Rev. Stat. § 393.1075.3 (1) – (3) (2010).

There is no language in the language I have cited or anywhere else in the statute that authorizes the recovery of lost revenue. Lost revenue is neither a *cost* of providing service nor a *cost* of providing energy efficiency programs.

The absence of any such language is telling. What is also telling is that the introduced version of SB 376 included language allowing for "recovery of lost sales attributable to approved energy efficiency programs" and "allowing the utility a fixed investment recovery mechanism to recover lost margins[.]" See Senate Bill No. 376, First Regular Session, 95th General Assembly, Read First Time February 16, 2009.

In the Truly Agreed To and Finally Passed version of the bill, signed by the Governor and codified at Section 393.1075, this language is conspicuously absent. While this absence is not dispositive of the General Assembly's intent, it is instructive. Had the General Assembly intended to authorize recovery of lost revenues, it certainly could have kept the language that appears in the introduced version of SB 376. In certain circumstances, such as this one, "omissions should be understood as exclusions." See, Angoff v. M and M Mgmt. Corp., 897 S.W.2d 649, 655 (Mo. Ct. App. 1995)

2. Allowing for recovery of lost revenue does not solve the problem

Encouraging energy efficiency, on the one hand, requires the utility to act counter to its financial interests. So, some form of lost revenue recovery mechanism is necessary, proponents assert, in order to remove this disincentive. But allowing for recovery of lost revenues does nothing to remove the incentive to increase revenues by increasing sales.

The lost revenue recovery mechanism is supposed to ameliorate the effects of any lost revenues specifically tied to measured and verified energy efficiency programs. The

problem, however, is that the evaluation, measurement, and verification program will likely lead to increased contention as parties litigate the accuracy of the evaluation, measurement, and verification program. Moreover, every indication is that measuring and verifying lost revenues associated with specific energy efficiency programs is a highly imprecise undertaking. In addition to leading to more contentious rate cases, this imprecision allows opportunity for mischief in measuring and verifying the savings associated with a particular program. This is particularly true where, as is the case with the Rules, the utility is charged with evaluating, measuring, and verifying its own program.

Only eight states currently use some form of lost revenue recovery mechanism.[2] More states are looking to some form of revenue decoupling as a preferred method of addressing the disincentives associated with promoting energy efficiency. I do not, at this time, express an opinion about the desirability of decoupling. I only note that it provides a more certain means of removing the so-called "throughput incentive," that is the incentive to increase revenues by increasing sales. Additionally, performance incentives are another effective alternative for addressing the disincentives associated with promoting energy efficiency.

Lost revenue recovery mechanisms are also difficult to administer as the ability to properly implement such mechanisms depends to a significant degree on robust evaluation, measurement, and verification. And since any recovered lost revenues are

[2] Colorado, Kentucky, Montana, North Carolina, Ohio, Oklahoma, South Carolina, and Wyoming. Utah is considering a lost revenue recovery mechanism. As of this writing, the status of that mechanism is uncertain. See The Edison Foundation's Institute for Electric Efficiency, "State Electric Efficiency Regulatory Frameworks," July 2010, accessed at http://www.electric-efficiency.com/issueBriefs/IEE_StateRegulatoryFrame_0710.pdf, on February 7, 2011.

only those directly attributable to the energy efficiency program, the utility continues to have the incentive to increase revenues through increased sales.

In addition to the difficulty associated with administering an effective evaluation, measurement, and verification program, the use of the lost revenue recovery mechanism gives rise to many other questions. How are revenues attributable to energy efficiency programs distinguished from decreased sales attributable to any other factor? How are potential off-system sales taken into account that are realized as a result of any energy efficiency programs? Will customers reap the benefits of increased energy efficiency and decreased consumption in the way of lower bills if the "lost revenues" are ultimately recovered? Will customers' incentives to use energy more efficiently be sustained or enhanced, as instructed by the MEEIA? There are too many unanswered questions to leave one comfortable that allowing for recovery of lost revenues will advance the overarching goals of promoting energy efficiency or inure any great benefits to ratepayers.

3. Conclusion

Energy efficiency measures are to be encouraged and implemented to the greatest degree possible. Energy efficiency is a proven, cost-effective means of addressing many problems: global climate change caused by green house gas emissions; air quality issues; consumption and depletion of finite fossil fuel resources; and energy independence and security.

The policy of the state is to value demand side investments equal to other investments. Utilities' financial incentives are to be aligned with helping customers use

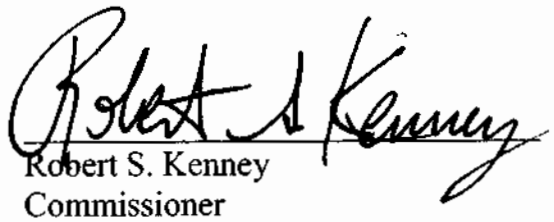
energy more efficiently and in a manner that sustains and enhances their incentives to use energy more efficiently. The MEEIA makes these pronouncements and charges the commission with drafting rules in support of these worthy goals. The MEEIA gives the commission latitude in promulgating rules supportive of its goals. But the MEEIA does not authorize recovery of lost revenues.

Moreover, recovery of lost revenues does not address the problem that it sets out to resolve. While it provides revenue stability for the utility, it does not remove the incentive to promote increased sales. Finally, it is hard to see how allowing for recovery of lost revenues supports or enhances the customers' incentives to use energy more efficiently.

I wholeheartedly and enthusiastically support the overarching principles of the MEEIA. And I recognize the need to align utilities' financial incentives with helping customers decrease consumption of their product. But I do not believe that allowing for recovery of lost revenues achieves this alignment.

For all of the foregoing reasons I dissent.

Respectfully submitted,



Robert S. Kenney
Commissioner

Dated this 9th day of February 2011,
at Jefferson City, Missouri

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 20—Electric Utilities

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 393.1075, RSMo Supp. 2010, and sections 386.040 and 386.250, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-20.093 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 15, 2010 (35 MoReg 1647–1666). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule was held December 20, 2010, and the public comment period ended December 15, 2010. The commission received a number of written comments from seventeen (17) entities, many of which were duplicated or echoed from the various entities and involve the same sections or subsections of the proposed rule. Consequently, these comments have been consolidated into sixteen (16) central comments, which are addressed below. At the public hearing, seventeen (17) witnesses testified. The entities filing comments were AARP, Union Electric d/b/a Ameren Missouri (Ameren Missouri), Consumers Council of Missouri (CCM), Empire District Electric Company (Empire), KCPL Greater Missouri Operations Company (GMO), Great Rivers Environmental Law Center (GRELC), Kansas City Power and Light Company (KCPL), Missouri Department of Natural Resources (MDNR), Missouri Energy Development Association (MEDA),[1] Missouri Energy Group (MEG), Missouri Industrial Energy Consumers (MIEC),[2] the National Resources Defense Council (NRDC), Office of the Public Counsel (OPC), OPOWER, Inc. (OPOWER), Renew Missouri, staff of the Missouri Public Service Commission (staff), Sierra Club, Walmart Stores East, LP, and Sam's East.

All of the comments were generally in support of a rule to implement demand-side programs and demand-side programs investment mechanisms (DSIMs), but many had suggestions for specific changes to the proposed rule and raised concerns regarding the timing of authorizing DSIMs and whether those mechanisms could include recovery of lost revenues. It should be noted that this proposed rule operates in conjunction with proposed rules 4 CSR 240-3.163, 4 CSR 240-3.164, and 4 CSR 240-20.094. All of these rules were promulgated to implement section 393.1075, RSMo, the Missouri Energy Efficiency Investment Act (MEEIA). Any comments directed towards 4 CSR 240-20.093 may be interrelated with these other proposed rules, and the interplay between these proposed rules may need to be addressed in the context of this order or rulemaking; however, this rule specifically addresses demand-side program investment mechanisms. It should also be noted that while comments were directed at specific sections and subsections of the rule, due to changes in the proposed rule those number citations may not match the final numbering of the sections and subsections of the rule.

[1] The MEDA members include KCPL, GMO, Empire, and Ameren Missouri.

[2] MIEC members include Anheuser-Busch Companies, Inc., BioKyowa, Inc., The Boeing Company, Doe Run, Enbridge, Ford Motor Company, General Motors Corporation, GKN Aerospace, Hussmann Corporation, JW Aluminum, MEMC Electronic Materials, Monsanto, Procter & Gamble Company, Nestlé Purina PetCare, Noranda Aluminum, Saint Gobain, Solutia, and U.S. Silica Company.

COMMENT #1: General Changes in Relation to Alleged Single-Issue Ratemaking. AARP, CCM, the MIEC, OPC, and staff all believe that any section or subsection of this rule that allows a rate adjustment outside of a general rate case would constitute unlawful single-issue ratemaking. AARP, CCM, and OPC state it is their belief that the legislature purposely deleted any language in SB 376 (the legislation ultimately codified as section 393.1075, RSMo) that would have allowed for changes to a demand-side program investment mechanism in between general rate cases. The purpose statement and following sections, subsections, and paragraphs of this rule identified by these entities that would require change based upon this comment are (1)(I), (1)(M), (1)(N), (1)(P), (1)(Q), (1)(R), (1)(DD), (2), (2)(B), (2)(F), (2)(G), (2)(G)1., (2)(G)2., (2)(H), (2)(I), (3)(B), (3)(D), (4), (4)(A)–(D), (5), (5)(A), (6), (10), (10)(A), (10)(B), (10)(B)1., and (10)(B)2.

MEDA, MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC, on the other hand, believe that the language in section 393.1075.3 and .5, RSMo, mandating the commission to provide timely cost recovery and timely earnings opportunities by developing cost recovery mechanisms without limitation allows the commission to establish and approve demand-side programs outside the framework of a general rate case. Section 393.1075.11, RSMo, states the commission "may adopt rules and procedures . . . as necessary, to ensure that electric corporations can achieve the goals of this section." Additionally, these entities point out that section 393.1075.13, RSMo, requires the use of a separate line item for charges attributable to demand-side programs, which is consistent with other billing elements that are adjusted outside of a general rate case. Taxes, fuel adjustment clauses, purchased gas adjustments, and infrastructure system replacement surcharges are all billed in this fashion. While language in the original version of SB 376 providing for a "cost adjustment clause" was removed, the legislature added "timely cost recovery," broadening the commission's discretion with developing cost recovery mechanisms.

RESPONSE: The commission believes that the express language in section 393.1075, RSMo, unequivocally requires the commission provide timely cost recovery for utilities when effectuating the declared social policy of valuing demand-side investments equal to traditional investments in supply and delivery infrastructure. MEEIA contemplates non-traditional investments and mandates timely cost recovery. The language of the proposed rule does not establish any specific type of demand-side investment mechanism (DSIM). Instead, the proposed rule allows the maximum latitude for creating DSIMs while allowing for periodic adjustments in conformity with the language in the statute. The argument that the proposed rule would in and of itself authorize single-issue ratemaking is unfounded and premature. Until an exact DSIM is established, there is no way to claim that original implementation or any periodic adjustments would constitute single-issue ratemaking.

Additionally, the statutory language from which the prohibition against single-issue ratemaking is derived originates in section 393.270.4, RSMo. The statute is permissive. It allows the commission the discretion to examine all facts that the commission believes are relevant. There is no set statutory requirement for how many or what type of facts or factors the commission must consider when making its determination. Indeed, the legislature has delegated its authority to the commission, being the expert agency charged with making these determinations, to decide what factors must be examined when determining the price to be charged for electricity. The commission will make no changes to the language identified by these comments in the proposed rule or to any other language in the rule that would be related to the issue raised in these comments.

COMMENT #2: Lost Revenue Recovery. AARP, CCM, OPC, MIEC, and staff believe that the lost revenue recovery mechanism provisions of the draft rules are unlawful because those provisions are not authorized by statute. These entities believe that lost revenue does not fit in a cost category. The section and subsections of this rule

identified by these entities that would require change based upon this comment are (1)(M), (1)(P), (1)(R), (1)(V), (1)(X), (2)(E), (2)(G), and (4).

MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC comment that lost revenue recovery is not cost recovery or an earnings opportunity. These entities believe that under the mechanism for recovering lost revenues in the proposed rule, utilities would continue to see higher levels of revenue recovery with higher sales. Therefore, they believe the utility will find itself facing the same conflict it currently faces at the prospect of taking actions or supporting policies to save energy and thereby save their customers money, knowing that such actions would cause their shareholders to miss out on the earnings from higher sales. These entities refer to the incentive to maintain higher sales as the "throughput incentive" and believe this is a strong disincentive for utilities to invest in energy efficiency or to support energy saving policies and measures outside their control.

MEG objects to any language that would allow a lost revenue recovery mechanism, not because it is unlawful but because it believes that reduced costs associated with reduced sales will balance out. MEG also believes that a lost recovery mechanism is inconsistent with the way other charges are handled. According to MEG, a utility believes that energy efficiency programs will reduce sales and reduce contributions to fixed costs, but, using that same reasoning, every time the utility adds a customer, it increases sales and contributions to fixed costs. Consequently, MEG concludes, there should be a refund to customers in any class of ratepayers every time a customer is added. MEG also believes there is no way to determine the actual effect of the various energy efficiency programs.

In addition to the other comments made, staff states that only eight (8) other states allow recovery of lost revenues. According to staff, other states that have had such a recovery mechanism in the past have abandoned it. Staff claims that the movement away from direct reimbursement for lost revenues is likely due to several factors including the fact that the approach is vulnerable to "gaming" by over-claiming savings, that it typically leads to very contentious reconciliation hearings as parties argue about the measurement of savings, and that it does not do anything to address the utility disincentive regarding broader energy efficiency policies beyond the specific program addressed with the mechanisms. Staff notes that other commissions have addressed this issue either through decoupling mechanisms and/or performance incentives. Staff recommends the "throughput incentive" be addressed through the utility incentive component of a DSIM.

MEDA believes that section 393.1075.3, RSMo, mandates recovery of all reasonable and prudent costs and requires the commission to ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently. MEDA members comment that unless a utility's lost revenues are included in the DSIM or other recovery mechanism, there will always be a financial bias against fully utilizing demand-side management programs that result in the reduction of a utility's revenues.
RESPONSE: Section 393.1075.3, RSMo, requires the commission to "allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs." Additionally, section 393.1075.3(2), RSMo, requires the commission to ensure that "utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently." Section 393.1075.5, RSMo, states the commission "may develop cost recovery mechanisms to further encourage investment in demand-side programs . . ." Lost revenue is a cost of delivering cost-effective demand-side programs, and the proposed rule, in conjunction with the interrelated proposed rules, i.e., 4 CSR 240-3.164, 4 CSR 240-20.093, and 4 CSR 240-20.094, require evaluation, measurement, and verification (EM&V). Any request for recovery of lost revenue will have to be verified and approved by the commission prior to recovery.

At the rulemaking hearing on December 20, 2010, several participants commented that decoupling could prevent over- and under-earning and that it might present a better long-term solution than allowing recovery of lost revenues. However, section 393.1075.5, RSMo, requires the commission to conclude a docket studying any rate design modification to those currently approved by the commission prior to promulgating an appropriate rule in that regard. Decoupling represents such a change in rate design, and no docket has been opened at this time to fully explore this or other possible changes. The commission has been directed by the legislature to implement section 393.1075, RSMo, and while this proposed rule may ultimately be an intermediary step to decoupling or other changes in rate design models, promulgating a lost revenue recovery mechanism is authorized by MEEIA and, with verification methods in place, the potential for possible "gaming of the system" is minimized. The commission will make no changes to the language identified by these comments in the proposed rule or to any other language in the rule that would be related to the issue raised in these comments.

COMMENT #3: Definition of Lost Revenue. A number of participants raised an issue concerning the issue of how the proposed rule defines lost revenue. Thus, should the commission include provisions for recovery of lost revenues, these entities debate how "lost revenues" should be defined.

See subsections (1)(X) and (1)(Y).

MEDA believes that if the commission is going to allow recovery of lost revenue, the definition of "lost revenue" should be modified to conform to the definition included in 4 CSR 240-22.020(38). MEDA sees no reason to have differing definitions in the commission's regulations.

Staff, on the other hand, does not believe that the Chapter 22 definition is appropriate because:

1) The language as drafted is "permissive" in nature and provides for the opportunity for recovery of lost revenues, rather than a guarantee. The proposed MEDA language is more explicit regarding the ability to recover lost revenues;

2) Staff opposes MEDA's proposed use of Chapter 22's definition of lost revenue, because the Chapter 22 definition is used exclusively to exclude lost revenues from the definitions of annualized costs for end-use measures, from the definition of costs for the utility cost test, and from the definition of costs for the total resource cost test. Chapter 22 does not contemplate the use of its definition of lost revenue for any other purposes, and it should not be assumed to be an appropriate definition for the MEEIA rules; and

3) The MEDA language also removes the requirements for evaluation, measurement, and verification (EM&V) of demand-side management (DSM) program results prior to recovery of lost revenue and, therefore, allows for recovery of lost revenues on a prospective basis without any measurement and verification of DSM program results by an independent evaluator. Staff believes that if recovery of lost revenue is included in the MEEIA rules, measurement and verification of lost revenues should be required and should only be accomplished through independent EM&V on a retrospective basis. Lost revenues are based on energy usage that did not occur. In staff's opinion, it is not appropriate to increase customer's rates on guesses as to what the customers who participated in the programs would have used absent the programs without a rigorous EM&V conducted by an independent evaluator.

Staff recommends clarifying the definition of "lost revenues" by changing "net retail" to "net system retail." Staff also proposes changes in the language of the interrelated rule, 4 CSR 240-3.163.

Staff's proposed change would apply to definition subsection (1)(Y) of this proposed rule and the following subsections of the interrelated proposed rules: 4 CSR 240-3.163(1)(Q), 4 CSR 240-3.164(1)(M), and 4 CSR 240-20.094(1)(U).

RESPONSE AND EXPLANATION OF CHANGE: The commission believes staff's proposed revision to the current definition of lost

revenue is appropriate and rejects MEDA's proposed revision for the reasons stated by staff. The commission will modify subsection (1)(Y), 4 CSR 240-3.163(1)(Q), 4 CSR 240-3.164(1)(M), and 4 CSR 240-20.094(1)(U) accordingly.

COMMENT #4: Lost Revenue Adjustment Mechanism. The staff of the Missouri Public Service Commission believes the language in subsection (2)(G) is unclear and that if the commission is going to allow the recovery of lost revenues that the language needs to be clarified as follows:

(G) Any utility lost revenue component of DSIM shall be based on energy or demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V.

1. A utility cannot recover revenues lost due to utility-demand side programs unless it does not recover the fixed cost as set in the last general rate case, i.e. actual annual billed system kWh is less than the system kWh used to calculate rates to recover revenues as ordered by the commission in the utility's last general rate case.

2. The commission shall order any DSIM utility lost revenue requirement simultaneously with the programs approved in accordance with 4 CSR 240-20.094.

3. In a utility's demand-side program approval proceeding in which lost revenues are considered there is no requirement for any implicit or explicit lost revenue recovery or for a particular form of lost revenue component.

4. The commission may address lost revenues solely or in part, directly or indirectly, with a performance incentive mechanism through a utility incentive component of DSIM.

5. Any explicit lost revenue component of DSIM shall be implemented on a retrospective basis and all energy and demand savings for claimed lost revenues must be measured and verified through EM&V prior to recovery.

These revisions, according to staff, clarify that lost revenues are only the result of changes in revenues that occur when commission-approved demand-side programs cause a drop in net system retail kWh below the level of system retail kWh used to set the electricity rates in the electric utility's last general rate proceeding. In other words, a utility cannot recover revenues lost due to utility demand-side programs unless it does not recover the fixed costs set in the last general rate case. Moreover, incorporating the revisions will prevent a utility from "double dipping" by claiming lost revenues due to demand-side programs while continuing to build load. Finally, utilities would not be able to earn more than authorized if they raise sales between rate cases because, with the recommended revisions, if overall sales exceed the system retail kWh set in the last rate case, the utility would be unable to recover any lost revenues.

On the other hand, the MEDA stakeholders believe that 4 CSR 240-20.093(2)(G)2., 3., and 4. (see above) do not provide for full and timely recovery of revenues lost due to the impact of its energy efficiency programs, and thus is not in compliance with the Act. Lost revenues should be recovered on a one-to-one basis and should not be subject to meeting targets. It is inconsistent for the commission to approve a three (3)-year plan with a budget, targets, cost recovery, and incentives, but then only allow the lost revenue component to be retrospective.

RESPONSE AND EXPLANATION OF CHANGE: As noted in the final orders of rulemaking for the interrelated rules, and in comment #3 above, the commission believes staff's proposed revision to the current definition of lost revenue is appropriate and rejects MEDA's proposed revision for the reasons stated by staff. The commission is modifying subsection (1)(Y), 4 CSR 240-3.163(1)(Q), 4 CSR 240-3.164(1)(M), and 4 CSR 240-20.094(1)(U) accordingly.

The commission now adopts staff's clarifying language for subsection (2)(G) for those same reasons.

COMMENT #5: Inconsistent Definitions for Designation of Utility's Request for Approval of a Demand-Side Program. In order to clarify language in the interrelated rules related to filing a request for approval of a demand-side program, staff recommends the following definition be included in 4 CSR 240-3.163, 4 CSR 240-20.093, and 4 CSR 240-20.094: "Filing for demand-side program approval means a utility's case filing for approval, modification, or discontinuance of demand-side program(s) which may also include a simultaneous request for the establishment, modification, or discontinuance of a DSIM."

After adopting this definition, the following inconsistent terms require clarification:

1) "utility's filing for demand-side program approval" found in 4 CSR 240-3.163(1)(I) and 4 CSR 240-20.093(1)(P);

2) "utility's filing for demand-side program approval proceeding" found in 4 CSR 240-3.163(1)(F), (G), (J), and (K); 4 CSR 240-20.093(1)(M), (N), (Q), (R), and (DD); and 4 CSR 240-20.094 (1)(J), (L), (M), and (N);

3) "demand-side program approval proceeding" found in 4 CSR 240-3.163(9), (9)(A), and (9)(B); 4 CSR 240-20.093(1)(I) and (DD); and 4 CSR 240-20.094(1)(I), (2), (2)(G)2., (3)(B), (4), and (10); and

4) "application for demand-side program approval proceeding" found in 4 CSR 240-20.093(2)(B).

Due to the lack of a definition and the use of inconsistent terminology, it is unclear whether a "filing," "application," or "proceeding" is intended to occur. Therefore, staff recommends that, if this language remains in the proposed MEEIA rules, the recommended definition for the phrase "filing for demand-side program approval" be utilized and that consistent terminology be used throughout the proposed MEEIA rules as indicated above.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees this language should be clarified, but it also believes that inclusion of the word "case" in staff's recommended definition could add confusion. Consequently, the commission will adopt the definition and clarify the identified terms.

COMMENT #6: The Demand-Side Investment Mechanism. MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC recommend that 4 CSR 240-20.093(1)(M)4. be changed so that it explicitly invites utilities to file a DSIM that also includes a mechanism that would, "Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently." This mirrors the statutory language in section 393.1075.3(2), RSMo, and will allow utilities to make the case for a DSIM that more fully meets the objective of the statute.

According to these stakeholders, utility revenues rise when sales rise, and the converse is equally true—declining sales mean declining revenues. Thus, Missouri utilities can earn more than their authorized fixed costs revenue requirement if sales are higher than was projected during a rate case. This "throughput incentive" amounts to a strong disincentive for utilities to invest in energy efficiency or to support energy saving policies and measures outside their control, and the magnitude of the disincentive is substantial. The statutory directive to the commission to align utility financial incentives such that utilities are encouraged to support energy efficiency investments that save customers money is rendered meaningless if this powerful disincentive is not addressed in a meaningful and timely manner in this rulemaking.

The current draft offers the utilities an opportunity to file a mechanism by which it can recover "lost revenues," which it defines in 4 CSR 240-3.163(1)(P). However, under such a mechanism, utilities would continue to see higher levels of revenue recovery with higher sales. Therefore, the utility will find itself facing the same conflict it currently faces at the prospect of taking actions or supporting policies to save energy and thereby save their customers money, knowing that such actions would cause their shareholders to miss out on the earnings from higher sales.

MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC believe that under the mechanism provided for in the proposed rules,

utility management would face this conflict at the prospect of supporting state building codes for energy-efficient construction, federal appliance standards that have successfully transformed the market for products ranging from refrigerators and televisions to air conditioners and lighting, or any action outside its own programs for advancing the use of increasingly efficient technologies. Such a mechanism would ultimately fail to align the utilities' financial incentives with the goals of the statute to capture all cost-effective energy efficiency for the benefit of ratepayers.

RESPONSE: As drafted, the proposed rule and the interrelated MEEIA rules provide for timely cost recovery and timely earnings opportunities. And, as drafted, if the annual incremental and cumulative energy and demand savings differ from the results of the utility's potential study, the commission has the ability to use the utility-specific results of the potential study as a guideline to review progress toward an expectation that the electric utility's demand-side programs can achieve a goal of all cost-effective demand-side savings. The rule promotes the needed flexibility that ensures that the utility financial incentives are aligned with helping customers use energy more efficiently. The commission believes the concerns raised in this comment are unfounded and will not change the current language of the proposed rule.

COMMENT #7: Definition of Probable Environmental Costs. MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC state that the statutory definition of the total resource cost test (TRC) includes "probable environmental compliance costs"; section 393.1075.2(6), RSMo. The proposed rules do not define or even use this term but incorporate instead the definition of "probable environmental costs" from the proposed integrated resource planning (IRP) rule, 4 CSR 240-22.020(46). See 4 CSR 240-3.163(1)(Q), 4 CSR 240-3.164(1)(R), 4 CSR 240-20.093(1)(Y), and 4 CSR 240-20.094(1)(V). The proposed rule 4 CSR 240-22.040(2)(B) does not provide an adequate method of calculating environmental compliance costs. It is restricted to future costs associated with a selected list of pollutants which, in the judgment of utility decision-makers, could have a significant effect on rates. SB 376 plainly means to include all costs, including present costs, and a more objective assessment, not one based on "subjective probability" in certain individuals' judgment. The commission needs to include a methodology in its rules for calculating these costs, which might include an environmental cost adder expressed in dollars or, as in Ohio, a percentage externality factor. A single-issue workshop docket could resolve the matter expeditiously. Relying on the IRP rule to implement SB 376 has the effect of adding criteria such as the subjective judgment of utility decision-makers that, as discussed above, are not in the statute.

Related to these concerns, OPC's proposed changes to the definition of the TRC as follows: Total resource cost test or TRC means the test that compares the avoided utility costs (including probable environmental compliance costs) to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side. The present value of the program avoided utility benefits shall be calculated over the projected life of the measures installed under the program.

RESPONSE AND EXPLANATION OF CHANGE: The concerns raised by these stakeholders regarding the definitions and relationships between the terms TRC, avoided cost or avoided utility cost, and probable environmental compliance cost are interrelated to OPC concerns with the definition of TRC echoed in comment #15 to this proposed rule and comment #17 to proposed rule 4 CSR 240-20.094. Consequently, the commission will address both of these concerns in its response to each comment.

The current proposed rules 4 CSR 240-3.163(1), 4 CSR 240-3.164(1), 4 CSR 240-20.093(1), and 4 CSR 240-20.094(1) have the same definitions for avoided cost or avoided utility cost, probable environmental cost, and total resource cost test.

Section 393.1075(6), RSMo, defines "total resource cost test" as a test that compares the sum of avoided utility costs and avoided probable environmental compliance costs to the sum of all incremental costs of end-use measures that are implemented due to the program, as defined by the commission in rules.

The commission proposes changes to the definitions in 4 CSR 240-3.163(1)(C), (R), and (T); 4 CSR 240-3.164(1)(A), (R), and (X); 4 CSR 240-20.093(1)(F), (Z), and (DD); and 4 CSR 240-20.094(1)(D), (W), and (Y) to address the concerns expressed by OPC and by MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC.

Additionally, the commission chooses to not include a methodology in its MEEIA rules for calculating probable environmental compliance costs. The commission notes that section (14) of the proposed rule requires the commission to complete a review of the effectiveness of this rule no later than four (4) years after the effective date at which time it may initiate rulemaking proceeding to revise the rule. Upon review, the commission will have the opportunity to revisit this issue to determine if it is appropriate to include a methodology. The commission's actions on the definitions of avoided cost, probable environmental compliance cost, and total resource cost test are consistent with the commission's actions regarding the interaction between this rule and 4 CSR 240-22 Electric Utility Resource Planning.

COMMENT #8: Definition of Staff. Staff believes that the word "staff" in 4 CSR 240-20.093(1)(AA) is too broadly defined in the proposed rule. The definition of staff in each of the draft rules would include attorneys in the Office of the General Counsel other than the General Counsel who are not in the Office of the Staff Counsel. Staff is not certain that result is intended. The definitions appear at 4 CSR 240-3.163(1)(Q), 4 CSR 240-3.164(1)(V), 4 CSR 240-20.093(1)(BB) and 4 CSR 240-20.094(1)(X).

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff. Not only did the commission not intend to include attorneys in the Office of the General Counsel other than the general counsel who are not in the Office of the Staff Counsel, but the commission will conform the definition of "staff" to that being formulated in the commission's Chapter 2 revisions in order to maintain consistency throughout all of its rules. "Staff" will be redefined.

COMMENT #9: Language Allowing Proposals of Alternative DSIMs. The MEDA stakeholders are concerned about the language in 4 CSR 240-20.093(2)(B) that states: "Any party to the application for demand-side program approval proceeding may support or oppose the establishment, continuation, or modification of a DSIM and/or may propose an alternative DSIM for the commission's consideration including, but not limited to, modifications to any electric utility's proposed DSIM."

These stakeholders point to section 393.1075.4, RSMo, which, according to them, underscores the voluntary nature of the act and the permissive language for electric utilities offering such programs when stating: "The commission shall permit electric corporations to implement commission-approved demand-side programs proposed pursuant to this section with a goal of achieving all cost-effective demand side savings." The commission is an agency of limited jurisdiction and authority, and the lawfulness of its actions depends upon whether or not it has statutory authority to act.

According to these stakeholders, the current language can be used to compel a utility to accept a proposed alternative or modified DSIM with which it does not agree in contradiction to the permissive language in section 393.1075.4, RSMo. MEDA recommends language that would allow the electric utility to have the final say on whether any modification or "alternative DSIM" is acceptable.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that this section requires clarification. It was not the intent of the rule to allow other entities to impose a DSIM or modifications to a DSIM to which the commission or the utility did not

agree. The commission may approve an alternative or modified DSIM, but the utility will have the final decision as to whether to accept an alternative or modified DSIM.

COMMENT #10: Cost Recovery Mechanism Modification. The MEDA stakeholders express concerns about the language in 4 CSR 240-20.093(2)(E). According to MEDA, the criteria placed in the proposed rule for the commission to consider whether to establish/modify/continue the cost recovery mechanism for DSM programs are not in the statute. MEEIA, section 393.1075.3, RSMo, states the commission shall provide timely cost recovery so any other criterion exceeds the statutory authority.

MEDA believes the following language should be eliminated from this subsection: "the expected magnitude of the impact to the utility's approved demand-side programs on the utility's costs, revenue, and earning, the ability of the utility to manage all aspects of the approved demand-side programs." The remaining language would read "In determining to approve, modify, or continue a DSIM, the commission shall consider, but is not limited to only considering, the ability to measure and verify the approved program's impacts." This change places the focus more on the ability to measure and verify the approved program's impacts.

RESPONSE AND EXPLANATION OF CHANGE: The commission recognizes MEDA's concerns but it also does not wish to preclude consideration of any criteria that is relevant to its determination. Consequently, the commission will change the mandatory language in this subsection to make it permissive.

COMMENT #11: Potential Penalty or Adverse Consequence Language. The MEDA stakeholders express concerns about the language in 4 CSR 240-093(2)(E) that requires the commission to consider "the incentives or disincentives provided to the utility as a result of the inclusion or exclusion of cost recovery component . . ."

MEDA states the purpose of the MEEIA is to remove barriers and reduce risk to the utilities that are created under the traditional regulatory model of utility cost recovery. MEDA claims section 393.1075, RSMo, contains no support for "penalties" or "adverse consequences." All references, or implications, to penalties or adverse consequences should be removed from each of the four (4) proposed rules relating to the MEEIA, with the exception of 4 CSR 240-20.094(7)(B) as it was explicit in the underlying statute.

RESPONSE AND EXPLANATION OF CHANGE: The commission believes that MEDA's concern with this language is unfounded. MEDA is misreading the section. To provide further clarity, however, the commission will add new language.

COMMENT #12: Requirements for Semi-Annual Adjustments of DSIM Rates. The MEDA stakeholders express concerns over the language in 4 CSR 240-20.093(4)(A)–(D). The language, according to MEDA, sets forth the requirements for semi-annual adjustments of DSIM and it should be modified to apply not only to the cost recovery component of the DSIM, but also to all components of the DSIM, i.e., cost recovery, lost margins or lost revenues, and incentive. The MEDA stakeholders recommend that in order to comply with the intent of the MEEIA—in particular, timely cost recovery to utilities, aligning utility financial incentives with helping customers use energy efficiently, and providing timely earnings opportunities associated with cost-effective energy efficiency—adjustments of DSIM rates between general rate proceedings should apply to all components of the DSIM. These three (3) components must be addressed in concert to provide a sustainable business model for utilities to pursue DSM programs and both benefit customers and satisfy shareholders.

RESPONSE AND EXPLANATION OF CHANGE: The commission will not modify the language in 4 CSR 240-20.093(4) to allow adjustments to the DSIM utility lost revenue requirement or to the DSIM utility incentive revenue requirement during the semi-annual adjustment to DSIM rates. The commission notes determination of the DSIM utility lost revenue requirement and the DSIM utility incentive revenue requirement are dependent upon measurement and verification performed by an EM&V contractor and documented in EM&V reports. Such EM&V reports will be performed in accordance with EM&V plan for each demand-side program and demand-side program plan required by 4 CSR 240-3.164(2)(C)13. and will likely be published no more frequently than annually and will not be available semiannually. However, the DSIM cost recovery revenue requirement is not dependent upon measurement and verification performed by an EM&V contractor and documented in EM&V reports but rather depends upon the contemporaneous accounting records of each electric utility.

In the process of reviewing this issue, the commission noticed some internal inconsistencies and finds it is necessary to make changes to language contained in section (1) and subsections (2)(F), (2)(G), (2)(H), and (2)(J). These changes should provide clarification to this issue.

COMMENT #13: Implementation of DSIM. Staff has concerns with the uncertainty regarding the operation of language in 4 CSR 240-20.093(5).

Staff is uncertain regarding the operation of language in 4 CSR 240-20.093(5) as drafted by MEDA and recommends that the language in this paragraph be removed. Specifically, staff believes the meaning of the reference to "deferral accounting" in this section is unclear. In general, "deferral accounting" means a process of capturing an increased level of expense as a regulatory asset or liability on a utility's balance sheet instead of immediately charging the increased expenses against earnings on its income statement. The normal effect of deferral accounting is to hold the utility harmless from certain adverse earnings impacts until such time that the increased costs can be reflected in the utility's rates.

Based on this understanding, staff interprets the use of the term "deferral accounting" in the proposed MEEIA rules as allowing the utility to defer the impact of increased DSIM costs on its balance sheet until such time that the utility can reflect the increased DSIM costs in its rates through either a DSIM or a general rate proceeding. If this interpretation is accurate, staff opposes this provision. Staff believes that allowing for both deferral accounting and the opportunity for expedited rate recovery of DSIM costs is unnecessary and may go beyond the intent of the MEEIA. If a utility is able to avoid charges against income related to increased DSIM costs through use of deferral accounting until its next rate case, the primary rationale for expedited rate recovery goes away. Alternatively, if a utility is allowed to adjust its rates to account for increases to its DSIM costs significantly faster than under ordinary ratemaking procedures in this jurisdiction, the need for additional earnings protection for the utility through use of deferral accounting is likewise not evident. For this reason, to the extent that the commission adopts procedures allowing for expedited rate recovery of DSIM costs by utilities, staff recommends that the language in the proposed rule 4 CSR 240-20.093(5) concerning deferral accounting be removed.

As an additional concern, staff also notes that the provision regarding "deferral accounting" provides for use of the utility's weighted average cost of capital as part of the deferral process. Applying an interest rate to deferred costs has the impact of holding the utility financially harmless concerning the time-value of money while it waits for recovery of its increased costs through customer rates. Elsewhere in the proposed rule (4 CSR 240-20.093(10)), though, the applicable language specifies that any refunds given back to customers as a result of subsequent prudence reviews of DSM expenditures are to have interest applied to the refund amounts at a rate equal to the utility's short-term borrowing rate. In almost all circumstances, a utility's weighted average cost of capital will be significantly greater than its short-term borrowing rate. Under the proposed MEEIA rule language, then, utilities will be compensated for the time-value of monies owed them through the DSIM at a higher interest rate than customers will

receive for the time-value of monies likewise owed back to them on account of the DSIM. Absent a specific demonstration that a utility's cost of capital is in fact higher than its customers' average cost of capital, such a differential is not warranted, and the two (2) rates of interest should be set equally if deferral accounting of DSIM revenue requirements is allowed. In this event, staff recommends that the utility's short-term borrowing rate be used for both purposes.

Ultimately, staff recommends elimination or modification of the language referenced under the heading, "Demand-Side Investment Mechanism (DSIM) Approval and Rate Changes Outside of a General Rate Case Proceeding" to reflect that DSIM rates may only be authorized and changed in general rate cases. However, if the commission disagrees with the staff on the legal issue regarding authorizing or permitting changes to the rates of a DSIM outside of a general rate case proceeding and this language remains in the rules, staff still has additional concerns with related language regarding simultaneous approval of demand-side programs and a DSIM as drafted by MEDA and recommends that modifications be made consistent with the comments above.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that this language requires clarification, but it does not wish to foreclose any potential methods of accounting that might facilitate the implementation of MEEIA. Consequently, the commission will modify section (5).

COMMENT #14: Prudence Reviews. The MEDA stakeholders express concerns over the language in subsection (10)(B). The current language does not allow sufficient time to review staff's report and request a hearing prior to the scheduled order date without creating the need to delay the order. The rule should be changed to reduce staff's time from one hundred eighty (180) days to one hundred fifty (150) days for filing its initial recommendation with the opportunity to request a hearing changing to one hundred sixty (160) days post commencement of the audit to allow time for a hearing and still have the commission's order issued not later than two hundred ten (210) days post-audit commencement.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with MEDA and will adopt the proposed changes.

COMMENT #15: Specific Language Changes. OPC believes that additional language should be added to various definitions in 4 CSR 240-20.093(1), (2), (7), and (10) to provide clarity and consistency with the statutory language in MEEIA. It should be noted that because OPC attempted to incorporate its red-line filing from July 23, 2010 (prior to the official comment period), and because changes to the language of the proposed rule had been made after that date, but prior to the submission of the proposed rules for its publication in the Missouri Register, not all of the subsections of OPC's July 23, 2010 filing match the current proposed rule.

OPC's suggestions for 4 CSR 240-20.093(1) include:

(I) Cost recovery methodology of a DSIM means the methodology approved by the commission in a general rate proceeding to allow recovery of costs of approved demand-side programs with interest.

(J) Deemed savings means a pre-determined, validated estimate of energy and peak demand savings attributable to an energy efficiency measure in a particular type of application that an electric utility may use instead of energy and peak demand savings determined through measurement and verification activities.

(J) Demand means the rate at which electric energy is used at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

(K) Demand response measure or program means measures or a program that decrease peak demand or shift demand to off-peak periods or lower price periods.

(L) Demand-side program means any program conducted by the utility to modify the net consumption of electricity on the retail customer's side of the meter including, but not limited to, energy efficiency measures, load management, demand response, and interruptible or curtailable load programs.

(M) Demand-side programs investment mechanism or DSIM means a mechanism approved by the commission in a utility's general rate proceeding to encourage investments in demand-side programs. The DSIM may include cost recovery mechanisms, in combination and without limitation:

1. Capitalization of investments in and expenditures for in demand-side programs;

2. Rate design modifications;

3. Accelerated depreciation on demand-side investments; and

4. Utility incentive based on allowing the utility to retain a portion of the net benefits of an approved demand-side program for its shareholders.

(O) DSIM charge means the charge on customers' bills for the portion of the DSIM revenue requirement assigned by the commission to a rate class.

(Q) DSIM utility incentive revenue requirement means the revenue requirement approved by the commission in a general rate proceeding to provide the utility with a portion of annual net shared benefits based on the achieved performance level of approved demand-side programs demonstrated through energy and demand savings measured, documented, and verified through EM&V reports compared to energy and demand savings targets.

(S) Energy means the total amount of electric power that is used by customers over a specified interval of time measured in kilowatt-hours (kWh) or megawatt-hours (MWh).

(T) Energy efficiency means equipment, materials, and practices at a customer's site that result in a reduction in electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kilowatts (kWs), or both. These measures may include thermal energy storage and removal of an inefficient appliance so long as the customer need satisfied by the appliance is still met.

(U) Evaluation, measurement, and verification or EM&V means the performance of studies and activities intended to evaluate the process of the utility's program delivery and oversight and to estimate and/or verify the actual energy and demand savings, cost effectiveness, and other effects from demand-side programs.

(W) Load management means load control activities that result in a reduction in peak demand on an electric utility system or a shifting of energy usage from a peak to an off-peak period or from high-price periods to lower price periods.

(Z) Total resource cost test or TRC means the test that compares the avoided utility costs (including probable environmental compliance costs) to the sum of all incremental costs of end use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side program The present value of the program benefits shall be calculated over the projected life of the measures installed under the program.

OPC's suggestions for 4 CSR 240-20.093(2) include:

(C) The commission shall approve the establishment, continuation, or modification of a DSIM and associated tariff sheets if it finds the DSIM will assist the commission's efforts to implement state policy contained in section 393.1075, RSMo, to:

1. Value demand-side investments equal to traditional investments in supply and delivery infrastructure;

2. Allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs.

(F) Any cost recovery component of a DSIM shall be based on costs of demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs. Indirect costs associated with demand-side programs, including but not limited to costs of utility market potential study and/or utility's portion of statewide technical reference manual, shall be allocated to demand-side programs and thus shall be eligible for recovery through an approved DSIM. The commission shall order any DSIM charges

in a general rate proceeding or in a semi-annual DSIM rate adjustment case.

(G) Any utility incentive component of a DSIM shall be based on the performance of demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and shall include a methodology for determining the utility's portion of annual net shared benefits achieved and documented through EM&V reports for approved demand-side programs. Each utility incentive component of a DSIM shall define the relationship between the utility's portion of annual net shared benefits achieved and documented through EM&V reports, annual energy savings achieved and documented through EM&V reports as a percentage of annual energy savings targets, and annual demand savings achieved and documented through EM&V reports as a percentage of annual demand savings targets.

(J) In instances where costs that make up the DSIM revenue requirement cannot be directly assigned to rate classes, the commission shall apportion to each of the rate classes the portion of the DSIM requirement that is not directly assigned to rate classes as follows:

1. The utility shall allocate the portion of demand-side costs that cannot be directly assigned to rate classes based upon the proportion of total directly assignable demands-side costs that have been directly assigned to each rate class.

5. In calculating DSIM charges for rate classes with customers who have opted out of the utility's demand-side programs, no charges will be assigned to those customers who have opted out of the utility's demand-side programs but charges will be set at a level that collects the entire DSIM revenue requirement for that rate class from the customers that did not opt out.

OPC's suggestions for 4 CSR 240-20.093(7) include:
(7) Evaluation, measurement, and verification (EM&V) of the process and impact of demand-side programs. Each electric utility shall hire an independent contractor to perform and report EM&V of each commission-approved demand-side program in accordance with 4 CSR 240-20.094 Demand-Side Programs. The commission shall hire an independent contractor to audit and report on the work of each utility's independent EM&V contractor.

(C) EM&V draft reports from the utility's contractor for each approved demand-side program shall be delivered simultaneously to the utility and to parties of the case in which the demand-side program was approved.

(D) EM&V final reports from the utility's contractor of each approved demand-side program shall:

1. Be completed by the EM&V contractor on a schedule approved by the commission at the time of demand-side program approval in accordance with 4 CSR 240- 20.094(3); and

OPC's suggestions for 4 CSR 240-20.093(10) include:
(10) Prudence reviews. A prudence review of the costs subject to the DSIM shall be conducted no less frequently than at twenty-four (24)-month intervals.

1. If the staff, Public Counsel, or other party auditing the DSIM believes that insufficient information has been supplied to make a recommendation regarding the prudence of the electric utility's DSIM, it may utilize discovery to obtain the information it seeks. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel, the processing timeline shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing timeline. For good cause shown the commission may further suspend this timeline.

RESPONSE: Perhaps OPC has not revisited its comments from July, 23, 2010, but the current version of the proposed rule adopted language in 4 CSR 240-20.093(1)(U) and 4 CSR 240-20.093(10) is completely identical to the OPC's proposed language. Finding there is no distinction between the current language and the proposed changes, the commission will not amend that subsection. Further, the commission has addressed OPC's concern with regard to the definition of the total resource cost test in its response to comment #7.

When OPC filed these proposed changes, it stated in its filing: "Many of these changes are self-explanatory (e.g., to provide clarity or consistency with the language in MEEIA) and some are described in the comments below." The commission addressed the specific comments that OPC provided an explanation for in other portions of this order or in the orders of the interrelated MEEIA rules. With regard to these specific suggestions, the commission notes that while it appreciates OPC's suggestions, offering to essentially re-write major portions of the proposed rules without providing an explanation or explaining how these changes would interact with and/or change the interrelated rules, by simply stating these changes are "self-explanatory" is unacceptable. It does not allow any other stakeholder the opportunity to address the specifics of the proposed changes and creates the potential for mischief. Perfect examples of this are suggested definitions for "cost recovery methodology," "deemed savings," and "demand response measure or program"—terms that are not used in the proposed rule.

Nevertheless, the commission has examined the remainder of OPC's proposed changes and does not believe they add any clarity to the current language. Finding there is no benefit to the proposed changes at this time, the commission will not adopt them. The commission notes it is possible that the commission will amend this rule in the future. Indeed, 4 CSR 240-20.093(14) mandates a complete review of the effectiveness of this rule no later than four (4) years after the effective date. The Utility-Specific and State-Wide Collaboratives to be mandated in 4 CSR 240-20.094 will be invited to make any suggested modifications during the review process.

COMMENT #16: Guidelines to Review Progress Toward an Expectation That the Electric Utility's Demand-Side Programs Can Achieve a Goal of All Cost-Effective Demand-Side Savings (Shared Savings Mechanism). OPOWER, Inc. recommends—
1) Adopting "clear and meaningful" efficiency targets—it points to Illinois, Minnesota, and Arkansas as examples and believes the guidelines in this proposed rule should be adopted;
2) Creation of a framework where utilities can receive a performance incentive for exceeding the targets and specifically define the performance incentives—it points to sharing savings mechanism used in Oklahoma, California, and Minnesota as examples.

OPOWER notes that the commission has proposed a performance incentive (a shared savings incentive model) to allow utilities to receive a percentage of the net benefits of energy efficiency programs, but recommends that the MO PSC build on this proposal and define the exact performance incentive to reward utilities. It is important that approval of incentives and associated cost and lost revenue recovery be provided expeditiously to utilities so as to minimize uncertainty. Providing certainty and timeliness will allow utilities to better incorporate efficiency programs into their bottom line and reduce business risk. Such an approach will serve both ratepayers and shareholders alike.

OPOWER points to the following performance incentives as potential models for the MO PSC to explore. Keeping in mind that the PSC has already identified the shared savings model, OPOWER has focused its examples around that type of incentive. OPOWER firmly believes that the final incentive mechanism adopted by the PSC will reflect the Missouri regulatory landscape. OPOWER is not suggesting that Missouri adopt any of these exact mechanisms. They wish simply to point out other shared savings incentive structures that have been adopted in other states that may provide some insights—

• Shared Savings Mechanism I (Oklahoma): The Oklahoma regulator has approved a different type of shared savings mechanism for both Oklahoma Gas and Electric (OG&E) and PSO (AEP). OG&E can earn up to twenty-five percent (25%) of net benefits for each

measure with a total resource cost (TRC) of greater than 1.0 and fifteen percent (15%) of net benefits for programs where TRC is less than 1.0. PSO may earn up to twenty-five percent (25%) net benefits for programs where "savings can be estimated" and fifteen percent (15%) for other programs where savings cannot be accurately identified (i.e., education and marketing programs). This incentive structure has had the desired effect of rapidly ramping up efficiency programs in Oklahoma.

• Shared Savings Mechanism II (Minnesota): In 2010 Minnesota revamped its incentive structure to a shared savings mechanism. When a utility achieves energy savings equal to one and one-half percent (1.5%) of retail sales, electric utilities will earn 0.09 cents for each kWh saved, and gas utilities will earn 4.50–6.50 times the number of Mcf saved.

• Shared Savings Mechanism III (California): Utilities are able to earn back a percentage of net benefits based on what percentage of goals they achieve.

o Over 100%: If the utilities achieve this threshold of savings, then utilities can achieve twelve percent (12%) of net benefits.

o 85–100%: If the utilities achieve this threshold of savings, then utilities can receive nine percent (9%) of net benefits. (In this context "net benefits" means monetary benefits to the consumer, or, in other words, how much consumers save on energy efficiency.)

o 65–85%: No earnings or penalties.

o 0–65%: Utilities are penalized 5 cents/kWh, $25/KW, 45 cents/therm below goals (penalties capped at $450 million per utility).

The advantage of this incentive structure is that it rewards utilities for strong performance, while only penalizing utilities for severely underperforming; and

3) Development of a comprehensive set of guidelines to measure the impact of energy efficiency programs, known as a Technical Resource Manual.

To encourage transparent, verifiable energy savings, MO PSC should develop a comprehensive set of guidelines for measuring the impact of energy efficiency programs, also known as a Technical Resource Manual (TRM). A TRM defines the proper method for calculating savings for specific measures across the residential, commercial, and industrial sectors. A Missouri TRM would provide the PSC and MO taxpayers with clearer insight into how estimates of energy savings are generated. Regulators in states with Technical Resource Manuals, including Pennsylvania, Vermont, and Massachusetts, are more confident than those without them that the efficiency savings claimed by their utilities are real and verified.

Measures typically fall into two (2) broad categories.

• *Asset-based (installed measures)*: algorithms are assigned for each individual measure in order to calculate deemed savings values. Examples of asset-based programs include CFL light bulbs, energy efficient appliances, and electric motors.

• *Non-Asset based (non-installed measures)*: for programs where a deemed savings approach is insufficient or not feasible, the TRM establishes protocols for how to measure program setup and net impact. Examples of non-asset based programs include behavior-based programs, home energy audits, and large-scale plant expansions.

A TRM not only provides clarity in measuring and reporting savings, but also regulatory certainty for all stakeholders. In short, a TRM ensures that ratepayer money is being spent to generate cost-effective savings that provide net economic benefits to ratepayers.

RESPONSE AND EXPLANATION OF CHANGE: OPOWER agrees that the commission has proposed a performance incentive (a shared savings incentive model) to allow utilities to receive a percentage of the net benefits of energy efficiency programs and the commission has established a framework for lost revenue recovery. The commission does not believe it is beneficial to attempt to be more exact with regard to performance incentives to reward utilities at this time. Rather, it is best to allow the maximum amount of flexibility to structure these mechanisms. Nothing precludes the commission from considering shared savings incentive structures on a case-by-case basis as it considers individual mechanisms.

With regard to the TRM, the commission supports the current proposed language in 4 CSR 240-20.094(8)(B). The commission prefers a statewide technical resource manual which is encouraged in 4 CSR 240-20.094(8)(B) through the stakeholder process. The commission believes the proposed rule makes the appropriate step towards achieving the goal of all cost-effective demand-side savings and will not alter the proposed rule to make it more specific or comprehensive at this time.

The commission appreciates OPOWER's comments and emphasizes that it is not foreclosing any options for future revisions. As was noted in the response to comment #7, it is possible that the commission will amend this rule in the future to modify these goals. Indeed, 4 CSR 240-20.094(10) mandates a complete review of the effectiveness of this rule no later than four (4) years after the effective date.

In the process of reviewing the issue concerning the TRM the commission noticed some internal inconsistencies with the way the interrelated rules made reference to the TRM. In some sections it referred to the TRM as the "technical resource manual" and in others it referred to the TRM as the "technical reference manual." The proper designation is "technical resource manual" and the commission will correct language in the following subsections of the MEEIA rules: 4 CSR 240-20.093(1)(CC), (2)(F), and (7)(E) and 4 CSR 240-20.094(1)(C).

4 CSR 240-20.093 Demand-Side Programs Investment Mechanisms

(1) As used in this rule, the following terms mean:

(F) Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from demand-side programs' energy savings and demand savings associated with generation, transmission, and distribution facilities including avoided probable environmental compliance costs. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs;

(I) Cost recovery component of a DSIM means the methodology approved by the commission in a utility's filing for demand-side program approval to allow the utility to receive recovery of costs of approved demand-side programs with interest;

(J) Demand means the rate of electric power use over an hour measured in kilowatts (kW);

(N) DSIM cost recovery revenue requirement means the revenue requirement approved by the commission in a utility's filing for demand-side program approval or a semi-annual DSIM rate adjustment case to provide the utility with cost recovery of demand-side program costs based on the approved cost recovery component of a DSIM;

(P) DSIM revenue requirement means the sum of the DSIM cost recovery revenue requirement, DSIM utility lost revenue requirement, and DSIM utility incentive revenue requirement;

(Q) DSIM utility incentive revenue requirement means the revenue requirement approved by the commission to provide the utility with a portion of annual net shared benefits based on the approved utility incentive component of a DSIM;

(R) DSIM utility lost revenue requirement means the revenue requirement explicitly approved (if any) by the commission to provide the utility with recovery of lost revenue based on the approved utility lost revenue component of a DSIM;

(T) Energy means the total amount of electric power that is used over a specified interval of time measured in kilowatt-hours (kWh);

(W) Filing for demand-side program approval means a utility's filing for approval, modification, or discontinuance of demand-side program(s) which may also include a simultaneous request for the

establishment, modification, or discontinuance of a DSIM;

(X) General rate proceeding means a general rate increase proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs or rates and charges of the electric utility are considered by the commission;

(Y) Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net system retail kWh delivered to jurisdictional customers below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V;

(Z) Probable environmental compliance cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility's decision-makers, may be imposed at some point within the planning horizon which would result in environmental compliance costs that could have a significant impact on utility rates;

(AA) Program pilot means a demand-side program designed to operate on a limited basis for evaluation purposes before full implementation;

(BB) Staff means all personnel employed by the commission, whether on a permanent or contract basis, except: commissioners; commissioner support staff, including technical advisory staff; personnel in the secretary's office; and personnel in the general counsel's office, including personnel in the adjudication department. Employees in the staff counsel's office are members of the commission's staff;

(CC) Statewide technical resource manual means a document that is used by electric utilities to assess energy savings and demand savings attributable to energy efficiency and demand response;

(DD) Total resource cost test, or TRC, means the test of the cost-effectiveness of demand-side programs that compares the avoided utility costs to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side program;

(EE) Utility incentive component of a DSIM means the methodology approved by the commission in a utility's filing for demand-side program approval to allow the utility to receive a portion of annual net shared benefits achieved and documented through EM&V reports;

(FF) Utility lost revenue component of a DSIM means the methodology approved by the commission in a utility's filing for demand-side program approval to allow the utility to receive recovery of lost revenue; and

(GG) Utility market potential study means an evaluation and report by an independent third party of the energy savings and demand savings available in a utility's service territory broken down by customer class and major end-uses within each customer class.

(2) Applications to establish, continue, or modify a DSIM. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility shall file an application with the commission to establish, continue, or modify a DSIM in a utility's filing for demand-side program approval.

(B) Any party to the application for a utility's filing for demand-side program approval may support or oppose the establishment, continuation, or modification of a DSIM and/or may propose an alternative DSIM for the commission's consideration including, but not limited to, modifications to any electric utility's proposed DSIM. Both the utility and the commission retain the authority to approve, accept, or reject any proposed establishment, continuation, or modification of a DSIM or any proposed alternative DSIM.

(E) In determining to approve, modify, or continue a DSIM, the commission may consider, but is not limited to only considering, the expected magnitude of the impact of the utility's approved demand-side programs on the utility's costs, revenues, and earnings, the ability of the utility to manage all aspects of the approved demand-side programs, the ability to measure and verify the approved program's impacts, any interaction among the various components of the DSIM that the utility may propose, and the incentives or disincentives provided to the utility as a result of the inclusion or exclusion of cost recovery component, utility lost revenue component, and/or utility incentive component in the DSIM. In this context the word "disincentives" means any barrier to the implementation of a DSIM. There is no penalty authorized in this section.

(F) Any cost recovery component of a DSIM shall be based on costs of demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs. Indirect costs associated with demand-side programs, including but not limited to costs of utility market potential study and/or utility's portion of statewide technical resource manual, shall be allocated to demand-side programs and thus shall be eligible for recovery through an approved DSIM. The commission shall approve any cost recovery component of a DSIM simultaneously with the programs approved in accordance with 4 CSR 240-20.094 Demand-Side Programs.

(G) Any utility lost revenue component of DSIM shall be based on energy or demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V.

1. A utility cannot recover revenues lost due to utility demand-side programs unless it does not recover the fixed cost as set in the last general rate case, i.e., actual annual billed system kWh is less than the system kWh used to calculate rates to recover revenues as ordered by the commission in the utility's last general rate case.

2. The commission shall order any utility lost revenue component of a DSIM simultaneously with the programs approved in accordance with 4 CSR 240-20.094 Demand-Side Programs.

3. In a utility's filing for demand-side program approval in which a utility lost revenue component of a DSIM is considered, there is no requirement for any implicit or explicit utility lost revenue component of a DSIM or for a particular form of a lost revenue component of a DSIM.

4. The commission may address lost revenues solely or in part, directly or indirectly, with a performance incentive mechanism through a utility incentive component of DSIM.

5. Any explicit utility lost revenue component of a DSIM shall be implemented on a retrospective basis and all energy and demand savings to determine a DSIM utility lost revenue requirement must be measured and verified through EM&V prior to recovery.

(H) Any utility incentive component of a DSIM shall be based on the performance of demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and shall include a methodology for determining the utility's portion of annual net shared benefits achieved and documented through EM&V reports for approved demand-side programs. Each utility incentive component of a DSIM shall define the relationship between the utility's portion of annual net shared benefits achieved and documented through EM&V reports, annual energy savings achieved and documented through EM&V reports as a percentage of annual energy savings targets, and annual demand savings achieved and documented through EM&V reports as a percentage of annual demand savings targets.

1. Annual energy and demand savings targets approved by the commission for use in the utility incentive component of a DSIM are not necessarily the same as the incremental annual energy and demand savings goals and cumulative annual energy and demand savings goals specified in 4 CSR 240-20.094(2).

2. The commission shall order any utility incentive component of a DSIM simultaneously with the programs approved in accordance with 4 CSR 240-20.094 Demand-Side Programs.

3. Any utility incentive component of a DSIM shall be implemented on a retrospective basis and all energy and demand savings used to determine a DSIM utility incentive revenue requirement must be measured and verified through EM&V.

(J) If the commission approves utility incentive component of a DSIM, such utility incentive component shall be binding on the commission for the entire term of the DSIM, and such DSIM shall be binding on the electric utility for the entire term of the DSIM, unless otherwise ordered or conditioned by the commission when approved.

(3) Application for Discontinuation of a DSIM. The commission shall allow or require a DSIM to be discontinued or any component of a DSIM to be discontinued only after providing the opportunity for a hearing.

(B) Any party to the utility's filing for demand-side program approval may oppose the discontinuation of a DSIM or any component of a DSIM.

(4) Requirements for Semi-Annual Adjustments of DSIM Rates, if the Commission Approves Adjustments of DSIM Rates Between General Rate Proceedings. Semi-annual adjustments to DSIM rates between general rate proceedings shall only include adjustments to the DSIM cost recovery revenue requirement and shall not include any adjustments to the DSIM utility lost revenue requirement or the DSIM utility incentive revenue requirement. Adjustments to the DSIM cost recovery revenue requirement may reflect new and approved demand-side programs, approved program modifications, and/or approved program discontinuations. When an electric utility files tariff sheets to adjust its DSIM rates between general rate proceedings, the staff shall examine and analyze the information filed by the electric utility in accordance with 4 CSR 240-3.163(8) and additional information obtained through discovery, if any, to determine if the proposed adjustments to the DSIM cost recovery revenue requirement and DSIM rates are in accordance with the provisions of this rule, section 393.1075, RSMo, and the DSIM established, modified, or continued in the most recent filing for demand-side program approval. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files its tariff sheets to adjust its DSIM rates. If the adjustments to the DSIM cost recovery revenue requirement and DSIM rates are in accordance with the provisions of this rule, section 393.1075, RSMo, and the DSIM established, modified, or continued in the most recent filing for demand-side program approval, the commission shall issue an interim rate adjustment order approving the tariff sheets and the adjustments to the DSIM rates shall take effect sixty (60) days after the tariff sheets were filed. If the adjustments to the DSIM cost recovery revenue requirement and DSIM rates are not in accordance with the provisions of this rule, section 393.1075, RSMo, or the DSIM established, modified, or continued in the most recent filing for demand-side program approval, the commission shall reject the proposed tariff sheets within sixty (60) days of the electric utility's filing and may instead order the filing of interim tariff sheets that implement its decision and approval.

(B) The semi-annual adjustments to the DSIM rates shall reflect a comprehensive measurement of both increases and decreases to the DSIM cost recovery revenue requirement established in the most recent demand-side program approval or semi-annual DSIM rate adjustment case plus the change in DSIM cost recovery revenue requirement which occurred since the most recent demand-side program approval or semi-annual DSIM rate adjustment case.

(5) Implementation of DSIM. Once a DSIM is approved, modified, or discontinued by the commission, the utility may request deferral accounting using the utility's latest approved weighted average cost of capital until the utility's next general rate proceeding. At the time of filing the general rate proceeding subsequent to DSIM approval, modification, or discontinuance, the commission shall use an interim rate adjustment order to implement the approved, modified, or discontinued DSIM.

(7) Evaluation, Measurement, and Verification (EM&V) of the Process and Impact of Demand-Side Programs. Each electric utility shall hire an independent contractor to perform and report EM&V of each commission-approved demand-side program in accordance with 4 CSR 240-20.094 Demand-Side Programs. The commission shall hire an independent contractor to audit and report on the work of each utility's independent EM&V contractor.

(E) Electric utility's EM&V contractors shall use, if available, a commission-approved statewide technical resource manual when performing EM&V work.

(10) Prudence Reviews. A prudence review of the costs subject to the DSIM shall be conducted no less frequently than at twenty-four (24)-month intervals.

(B) The staff shall submit a recommendation regarding its examination and analysis to the commission not later than one hundred fifty (150) days after the staff initiates its prudence audit. The timing and frequency of prudence audits for DSIM shall be established in the utility's filing for demand-side program approval in which the DSIM is established. The staff shall file notice within ten (10) days of starting its prudence audit. The commission shall issue an order not later than two hundred ten (210) days after the staff commences its prudence audit if no party to the proceeding in which the prudence audit is occurring files, within one hundred sixty (160) days of the staff's commencement of its prudence audit, a request for a hearing.

1. If the staff, public counsel, or other party auditing the DSIM believes that insufficient information has been supplied to make a recommendation regarding the prudence of the electric utility's DSIM, it may utilize discovery to obtain the information it seeks. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel, the processing timeline shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing timeline. For good cause shown, the commission may further suspend this timeline.

2. If the timeline is extended due to an electric utility's failure to timely provide sufficient responses to discovery and a refund is due to the customers, the electric utility shall refund all imprudently incurred costs plus interest at the electric utility's short-term borrowing rate.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Chairman's Request for A Status Report Regarding Energy Efficiency Advisory Groups and Collaboratives	)))	**File No. AO-2011-0035**
In the Matter of the Consideration and Implementation of Section 393.1075, RSMo., The Missouri Energy Efficiency Investment Act	))))	**File No. EX-2010-0368**

CHAIRMAN CLAYTON'S CONCURRENCE TO FINAL ORDER OF RULEMAKING AND RESPONSE TO STAFF'S REPORT

Issue Date: February 9, 2011

This Commissioner files this opinion in support of the Final Order of Rulemaking in File No. EX-2010-0368, regulations formulating future efforts in energy efficiency investments for Missouri investor-owned utilities. Additionally, this opinion sets out this Commissioner's response to the Staff Report on energy efficiency programs, filed in Case No. AO-2011-0035. These two cases demonstrate the new commitment to energy efficiency in Missouri in empowering utility customers to take control of their energy bills.

In response to my request, the Staff of the Commission filed a report on September 15, 2010, describing the work of each energy efficiency advisory group and collaborative currently addressing the energy efficiency issues facing Missouri's investor-owned electric and natural gas utilities. The report is an impressive compilation of material summarizing the changes in Missouri's efforts at improving the efficient delivery and use of energy. As our nation faces an uncertain future with regard to energy-related priorities, the compilation of material demonstrates the Commission's new commitment to assisting customers and utilities in better managing our energy usage through efficiency programs.

The report highlights that in the past several years, Missouri utilities have gone from a few efficiency programs inconsistently scattered among varying sectors to a comprehensive offering of programs with relatively consistent goals among all utilities. Collaboratives or stakeholder groups have been established for each utility to collect input and formulate policy involving diverse groups, associations and agencies with many people effectively engaged. Program offerings are considered, funded and implemented through the collaboratives, with joint recommendations made to the Commission for approval or rejection in a rate case. Procedures are now in place for resolution of disputes among parties and more information is being distributed to more utility customers than ever before with a wide array of opportunities to reduce energy bills.

The concept of energy efficiency is being embraced as never before. Utilities are now recognizing the benefits of efficient use through reduced demand and energy charges and with less urgency in identifying new sources of electric generation or natural gas acquisition. With increased efficiency of energy use, customers are less vulnerable to natural gas price volatility. Utilities are able to delay or avoid costly new energy sources. Demand Response programs are in place in some territories in attempts to avoid the use of costly gas "peaker plants" in times of high demand, which demonstrate that utilities and customers can benefit from reducing power generation costs. Efficiency programs, in general, are smoothing increases in overall demand with more manageable growth, while avoiding the difficulties of securing new, costly baseload generation.

Customers have much to gain from efficient use of energy. While customers benefit from lower utility costs, customers also receive the direct benefit education and training in learning how energy is used, how it is priced and how they can find ways to reduce consumption, thereby , reducing their monthly energy bills. Customers must have greater options through utility programs in evaluating appliance purchases, understanding heating

and cooling needs, learning about new technologies, and learning that one's quality of life does not have to decrease when energy is used more efficiently. To customers, effective energy efficiency programs translate into empowerment to take control of their energy bills. Rebates, incentives and education provide customers with the necessary tools to change behavior and change how energy decisions are made.

The Commission has recognized that these new programs require adequate funding to be effective. In 2000, total funding for efficiency programs focused primarily on weatherization in the amount of $875,000, involving a couple of utilities. In 2010, funding levels have increased to $53 million, including all 8 utilities. The Commission has determined that natural gas utilities should strive for the target of EE funding at a minimum of .5% of their gross revenues, and all large gas utilities are moving toward this policy target. Electric utilities are taking similar steps at developing and delivering a comprehensive offering of efficiency programs with sufficient funding levels.

Lastly, as Missouri ramps up its efficiency programs, its investments and its increase in knowledge and action for customers, this Commission and future Commissions must be prepared to address an evolving utility industry. If load growth is curtailed, there will be pressure to reevaluate how rates are set. Utilities will push for equal or greater returns on efficiency investments and new models of incentives for utility performance in meeting Commission goals and priorities. Utilities will demand fair treatment if downward pressure is applied to their efforts at increasing sales for greater revenue. On the other hand, consumers will demand that the Commission apply close supervision to new programs, carefully scrutinize new rate making requests and cautiously evaluate any modification to the traditional rate of return regulatory compact. This and future Commissions will be faced with balancing these potentially competing positions to ensure that programs are cost-effective,

deliver benefits to both customers and utilities, and do not inequitably shift risk or cost. These are complicated challenges in a new world of energy delivery.

The Commission is prepared to tackle these issues and has taken additional steps to gather information and set policy. First, the Commission continues its statewide energy efficiency study with a partnering agency, the Missouri Energy Center. It is this Commissioner's hope that realistic, achievable goals can be identified to provide greater assistance to those working on Missouri's energy future. Secondly, the Commission has concluded the formal rulemaking process with regulations stemming from Senate Bill 376, the Missouri Energy Efficiency Act. Through these rules, the Commission addresses a number of significant policy questions to provide clarity and certainty for current and future efficiency programs. The Commission has developed the rules with an eye towards flexibility and the understanding that incentive mechanisms will require careful planning and design. The Commission will need several "attempts" at determining the large-scale benefits and costs upon all stakeholders. Lessons learned from those efforts will provide future commissions with the knowledge to develop programs effectively. The rules certainly contemplate a changing world where the regulator may no longer demand greater sales of energy, but rather strive for decreased usage. How does a utility reduce its sales but maintain profitability? The rules are designed to consider this conundrum.

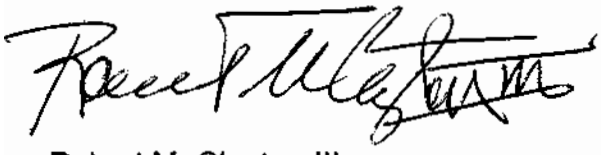
In conclusion, this Commissioner commends and thanks the staff of the Commission for its efforts in working through challenging and potentially controversial issues. Most Missourians are unaware of the work of the Public Service Commission and even fewer know the dedication, the expertise and the significant work ethic of the PSC staff. This report illustrates the giant steps taken in recent years and the future work that lies ahead. It is my hope and request that a similar report be prepared annually, in a format for easy

consumption, so that the public and Commissioners may understand what we are doing on critically important issues and how those issues evolve in the future.

Therefore, it is my request that the Staff prepares an annual update to its report, in a format acceptable to Staff, every September 15th, and makes that update available to the Commission and the public.

For the foregoing reasons, this Commissioner concurs.

Respectfully submitted,



Robert M. Clayton III
Chairman

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Consideration and Implementation of Section 393.1075, the Missouri Energy Efficiency Investment Act	)))	Case No. EX-2010-0368

DISSENTING OPINION OF COMMISSIONER ROBERT S. KENNEY

I write to dissent from the majority's Final Orders of Rulemaking regarding the Missouri Energy Efficiency Investment Act.[1] I specifically dissent as it relates to those Rules allowing utilities to recover lost revenue. I dissent because the Missouri Energy Efficiency Investment Act (the "MEEIA" or the "Act"), the statute under which the Commission has authority to promulgate these Rules, does not authorize recovery of lost revenue; I dissent because authorizing recovery of lost revenues does nothing to remove the disincentive it is ostensibly designed to remove; and I dissent because authorizing recovery of lost revenues does not serve the interests of Missouri citizens.

I believe in energy efficiency as a least-cost way of reducing carbon emissions. Along with greater deployment of renewable resources, nuclear energy, and new technologies such as carbon capture and sequestration, energy efficiency measures are a certain and cost-effective way of reducing carbon emissions. Equally as important, energy efficiency measures give utility customers an opportunity to realize savings in their bills.

The MEEIA is the product of Senate Bill No. 376, which was first read February 16, 2009. As with most pieces of legislation, SB 376 as introduced differed from the Senate Substitute for Senate Committee Substitute for SB 376, which was the Truly

[1] 4 CSR 240-3.163; 4 CSR 240-3.164; 4 CSR 240-20.093; and 4 CSR 240-20.094 (collectively the "Rules").

Agreed To and Finally Passed bill as signed by Governor Nixon. I will discuss the relevance of this fact later. Governor Nixon signed SB 376 in July 2009. It is codified at Section 393.1075 of the Missouri Revised Statutes.

The MEEIA is a laudable piece of legislation. And the rules we have drafted in support of the MEEIA represent the hard work of our staff and numerous stakeholders. They are to be commended for their efforts. But the issue of lost revenue recovery is of such significance that including provisions allowing for the recovery of lost revenues damages the rules as a whole.

1. The MEEIA does not authorize recovery of lost revenue

The MEEIA sets forth the state's policy "to value demand side investment equal to traditional investment in supply and delivery infrastructure and allow recovery of all reasonable and prudent *costs* of delivering cost-effective demand-side programs." Mo. Rev. Stat. § 393.1075.3 (2010) (emphasis supplied). The MEEIA further provides that "the [C]ommission may develop *cost* recovery mechanisms to further encourage investments in demand side programs[.]" Mo. Rev. Stat. § 393.1075.5 (2010) (emphasis supplied).

The Commission is instructed to support the state's policy by providing timely cost recovery for utilities; by ensuring that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that *sustains or enhances utility customers' incentives* to use energy more efficiently; and by providing timely earnings opportunities associated with cost effective measurable and verifiable efficiency savings. Mo. Rev. Stat. § 393.1075.3 (1) – (3) (2010).

There is no language in the language I have cited or anywhere else in the statute that authorizes the recovery of lost revenue. Lost revenue is neither a *cost* of providing service nor a *cost* of providing energy efficiency programs.

The absence of any such language is telling. What is also telling is that the introduced version of SB 376 included language allowing for "recovery of lost sales attributable to approved energy efficiency programs" and "allowing the utility a fixed investment recovery mechanism to recover lost margins[.]" See Senate Bill No. 376, First Regular Session, 95th General Assembly, Read First Time February 16, 2009.

In the Truly Agreed To and Finally Passed version of the bill, signed by the Governor and codified at Section 393.1075, this language is conspicuously absent. While this absence is not dispositive of the General Assembly's intent, it is instructive. Had the General Assembly intended to authorize recovery of lost revenues, it certainly could have kept the language that appears in the introduced version of SB 376. In certain circumstances, such as this one, "omissions should be understood as exclusions." See, Angoff v. M and M Mgmt. Corp., 897 S.W.2d 649, 655 (Mo. Ct. App. 1995)

2. Allowing for recovery of lost revenue does not solve the problem

Encouraging energy efficiency, on the one hand, requires the utility to act counter to its financial interests. So, some form of lost revenue recovery mechanism is necessary, proponents assert, in order to remove this disincentive. But allowing for recovery of lost revenues does nothing to remove the incentive to increase revenues by increasing sales.

The lost revenue recovery mechanism is supposed to ameliorate the effects of any lost revenues specifically tied to measured and verified energy efficiency programs. The

problem, however, is that the evaluation, measurement, and verification program will likely lead to increased contention as parties litigate the accuracy of the evaluation, measurement, and verification program. Moreover, every indication is that measuring and verifying lost revenues associated with specific energy efficiency programs is a highly imprecise undertaking. In addition to leading to more contentious rate cases, this imprecision allows opportunity for mischief in measuring and verifying the savings associated with a particular program. This is particularly true where, as is the case with the Rules, the utility is charged with evaluating, measuring, and verifying its own program.

Only eight states currently use some form of lost revenue recovery mechanism.[2] More states are looking to some form of revenue decoupling as a preferred method of addressing the disincentives associated with promoting energy efficiency. I do not, at this time, express an opinion about the desirability of decoupling. I only note that it provides a more certain means of removing the so-called "throughput incentive," that is the incentive to increase revenues by increasing sales. Additionally, performance incentives are another effective alternative for addressing the disincentives associated with promoting energy efficiency.

Lost revenue recovery mechanisms are also difficult to administer as the ability to properly implement such mechanisms depends to a significant degree on robust evaluation, measurement, and verification. And since any recovered lost revenues are

[2] Colorado, Kentucky, Montana, North Carolina, Ohio, Oklahoma, South Carolina, and Wyoming. Utah is considering a lost revenue recovery mechanism. As of this writing, the status of that mechanism is uncertain. See The Edison Foundation's Institute for Electric Efficiency, "State Electric Efficiency Regulatory Frameworks," July 2010, accessed at http://www.electric-efficiency.com/issueBriefs/IEE_StateRegulatoryFrame_0710.pdf, on February 7, 2011.

only those directly attributable to the energy efficiency program, the utility continues to have the incentive to increase revenues through increased sales.

In addition to the difficulty associated with administering an effective evaluation, measurement, and verification program, the use of the lost revenue recovery mechanism gives rise to many other questions. How are revenues attributable to energy efficiency programs distinguished from decreased sales attributable to any other factor? How are potential off-system sales taken into account that are realized as a result of any energy efficiency programs? Will customers reap the benefits of increased energy efficiency and decreased consumption in the way of lower bills if the "lost revenues" are ultimately recovered? Will customers' incentives to use energy more efficiently be sustained or enhanced, as instructed by the MEEIA? There are too many unanswered questions to leave one comfortable that allowing for recovery of lost revenues will advance the overarching goals of promoting energy efficiency or inure any great benefits to ratepayers.

3. Conclusion

Energy efficiency measures are to be encouraged and implemented to the greatest degree possible. Energy efficiency is a proven, cost-effective means of addressing many problems: global climate change caused by green house gas emissions; air quality issues; consumption and depletion of finite fossil fuel resources; and energy independence and security.

The policy of the state is to value demand side investments equal to other investments. Utilities' financial incentives are to be aligned with helping customers use

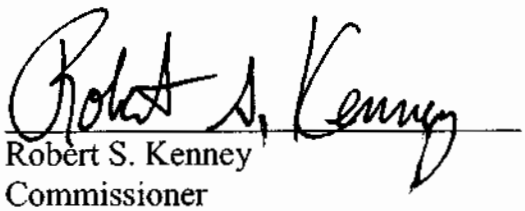
energy more efficiently and in a manner that sustains and enhances their incentives to use energy more efficiently. The MEEIA makes these pronouncements and charges the commission with drafting rules in support of these worthy goals. The MEEIA gives the commission latitude in promulgating rules supportive of its goals. But the MEEIA does not authorize recovery of lost revenues.

Moreover, recovery of lost revenues does not address the problem that it sets out to resolve. While it provides revenue stability for the utility, it does not remove the incentive to promote increased sales. Finally, it is hard to see how allowing for recovery of lost revenues supports or enhances the customers' incentives to use energy more efficiently.

I wholeheartedly and enthusiastically support the overarching principles of the MEEIA. And I recognize the need to align utilities' financial incentives with helping customers decrease consumption of their product. But I do not believe that allowing for recovery of lost revenues achieves this alignment.

For all of the foregoing reasons I dissent.

Respectfully submitted,



Robert S. Kenney
Commissioner

Dated this 9th day of February 2011,
at Jefferson City, Missouri

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 20—Electric Utilities

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 393.1075, RSMo Supp. 2010 and sections 386.040 and 386.250, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-20.094 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 15, 2010 (35 MoReg 1667–1685). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule was held December 20, 2010, and the public comment period ended December 15, 2010. The commission received a number of written comments from seventeen (17) entities, many of which were duplicated or echoed from the various entities and involve the same sections or subsections of the proposed rule. Consequently, these comments have been consolidated into eighteen (18) central comments, which are addressed below. At the public hearing, seventeen (17) witnesses testified. The entities filing comments were AARP, Union Electric d/b/a Ameren Missouri (Ameren Missouri), Consumers Council of Missouri (CCM), Empire District Electric Company (Empire), KCPL Greater Missouri Operations Company (GMO), Great Rivers Environmental Law Center (GRELC), Kansas City Power and Light Company (KCPL), Missouri Department of Natural Resources (MDNR), Missouri Energy Development Association (MEDA),[1] Missouri Energy Group (MEG), Missouri Industrial Energy Consumers (MIEC),[2] the National Resources Defense Council (NRDC), Office of the Public Counsel (OPC), OPOWER, Inc. (OPOWER), Renew Missouri, staff of the Missouri Public Service Commission (staff), Sierra Club, Walmart Stores East, LP, and Sam's East.

All of the comments were generally in support of a rule to implement demand-side programs and demand-side programs investment mechanisms (DSIMs), but many had suggestions for specific changes to the proposed rule and raised concerns regarding the timing of authorizing DSIMs and whether those mechanisms could include recovery of lost revenues. It should be noted that this proposed rule operates in conjunction with proposed rules 4 CSR 240-3.163, 4 CSR 240-3.164, and 4 CSR 240-20.093. All of these rules were promulgated to implement section 393.1075, RSMo, the Missouri Energy Efficiency Investment Act (MEEIA). Any comments directed towards 4 CSR 240-20.094 may be interrelated with these other proposed rules, and the interplay between these proposed rules may need to be addressed in the context of this order or rulemaking; however, in and of itself, this rule specifically addresses demand-side programs. It should also be noted that while comments were directed at specific sections and subsections of the rule, due to changes in the proposed rule those number citations may not match the final numbering of the sections and subsections of the rule.

[1] The MEDA members include KCPL, GMO, Empire, and Ameren Missouri.

[2] MIEC members include Anheuser-Busch Companies, Inc., BioKyowa, Inc., The Boeing Company, Doe Run, Enbridge, Ford Motor Company, General Motors Corporation, GKN Aerospace, Hussmann Corporation, JW Aluminum, MEMC Electronic Materials, Monsanto, Procter & Gamble Company, Nestlé Purina PetCare, Noranda Aluminum, Saint Gobain, Solutia, and U.S. Silica Company.

COMMENT #1: General Changes in Relation to Alleged Single-Issue Ratemaking. AARP, CCM, MIEC, OPC, and staff all believe that any section or subsection of this rule that allows a rate adjustment outside of a general rate case would constitute unlawful single-issue ratemaking. AARP, CCM, and OPC state it is their belief that the legislature purposely deleted any language in SB 376 (the legislation ultimately codified as section 393.1075, RSMo) that would have allowed for changes to a demand-side program investment mechanism in between general rate cases. The subsections of this rule identified by these entities that would require change based upon this comment are (1)(J), (1)(L), (1)(M), (1)(N), (1)(Y), and (3)(E).

MEDA, MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC, on the other hand, believe that the language in section 393.1075.3 and .5, RSMo, mandating the commission to provide timely cost recovery and timely earnings opportunities by developing cost recovery mechanisms without limitation allows the commission to establish and approve demand-side programs outside the framework of a general rate case. Section 393.1075.11, RSMo, states the commission "may adopt rules and procedures . . . as necessary, to ensure that electric corporations can achieve the goals of this section." Additionally, these entities point out that section 393.1075.13, RSMo, requires the use of a separate line item for charges attributable to demand-side programs, which is consistent with other billing elements that are adjusted outside of a general rate case. Taxes, fuel adjustment clauses, purchased gas adjustments, and infrastructure system replacement surcharges are all billed in this fashion. While language in the original version of SB 376 providing for a "cost adjustment clause" was removed, the legislature added "timely cost recovery," broadening the commission's discretion with developing cost recovery mechanisms.

RESPONSE: The commission believes that the express language in section 393.1075, RSMo, unequivocally requires the commission provide timely cost recovery for utilities when effectuating the declared social policy of valuing demand-side investments equal to traditional investments in supply and delivery infrastructure. MEEIA contemplates non-traditional investments and mandates timely cost recovery. The language of the proposed rule does not establish any specific type of demand-side investment mechanism (DSIM). Instead, the proposed rule allows the maximum latitude for creating demand-side programs and the associated DSIMs while allowing for periodic adjustments in conformity with the language in the statute. The argument that the proposed rule would in and of itself authorize single-issue ratemaking is unfounded and premature. Until an exact DSIM is established, there is no way to claim that original implementation or any periodic adjustments would constitute single-issue ratemaking.

Additionally, the statutory language from which the prohibition against single-issue ratemaking is derived originates in section 393.270.4, RSMo. The statute is permissive. It allows the commission the discretion to examine all facts that the commission believes are relevant. There is no set statutory requirement for how many or what type of facts or factors the commission must consider when making its determination. Indeed, the legislature has delegated its authority to the commission, being the expert agency charged with making these determinations, to decide what factors must be examined when determining the price to be charged for electricity. The commission will make no changes to the language identified by these comments in the proposed rule or to any other language in the rule that would be related to the issue raised in these comments.

COMMENT #2: Lost Revenue Recovery. AARP, CCM, OPC, MIEC, and staff believe that the lost revenue recovery mechanism provisions of the draft rules are unlawful because those provisions are not authorized by statute. These entities believe that lost revenue does not fit in a cost category. The section and subsections of this rule identified by these entities that would require change based upon this comment are (1)(J), (1)(N), (1)(R), and (1)(T), and (4).

MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC comment that lost revenue recovery is not cost recovery or an earnings opportunity. These entities believe that under the mechanism for recovering lost revenues in the proposed rule, utilities would continue to see higher levels of revenue recovery with higher sales. Therefore, they believe the utility will find itself facing the same conflict it currently faces at the prospect of taking actions or supporting policies to save energy and thereby save their customers money, knowing that such actions would cause their shareholders to miss out on the earnings from higher sales. These entities refer to the incentive to maintain higher sales as the "throughput incentive" and believe this is a strong disincentive for utilities to invest in energy efficiency or to support energy saving policies and measures outside their control.

MEG objects to any language that would allow a lost revenue recovery mechanism, not because it is unlawful but because it believes that reduced costs associated with reduced sales will balance out. MEG also believes that a lost recovery mechanism is inconsistent with the way other charges are handled. According to MEG, a utility believes that energy efficiency programs will reduce sales and reduce contributions to fixed costs, but, using that same reasoning, every time the utility adds a customer, it increases sales and contributions to fixed costs. Consequently, MEG concludes, there should be a refund to customers in any class of ratepayers every time a customer is added. MEG also believes there is no way to determine the actual effect of the various energy efficiency programs.

In addition to the other comments made, staff states that only eight (8) other states allow recovery of lost revenues. According to staff, other states that have had such a recovery mechanism in the past have abandoned it. Staff claims that the movement away from direct reimbursement for lost revenues is likely due to several factors including the fact that the approach is vulnerable to "gaming" by over-claiming savings, that it typically leads to very contentious reconciliation hearings as parties argue about the measurement of savings, and that it does not do anything to address the utility disincentive regarding broader energy efficiency policies beyond the specific program addressed with the mechanisms. Staff notes that other commissions have addressed this issue either through decoupling mechanisms and/or performance incentives. Staff recommends the "throughput incentive" be addressed through the utility incentive component of a DSIM.

MEDA believes that section 393.1075.3, RSMo, mandates recovery of all reasonable and prudent costs and requires the commission to ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently. MEDA members comment that unless a utility's lost revenues are included in the DSIM or other recovery mechanism, there will always be a financial bias against fully utilizing demand-side management programs that result in the reduction of a utility's revenues.

RESPONSE: Section 393.1075.3, RSMo, requires the commission to "allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs." Additionally, section 393.1075.3(2), RSMo, requires the commission to ensure that "utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently." Section 393.1075.5, RSMo, states the commission "may develop cost recovery mechanisms to further encourage investment in demand-side programs . . ." Lost revenue is a cost of delivering cost-effective demand-side programs, and the proposed rule, in conjunction with the interrelated proposed rules, i.e., 4 CSR 240-3.163, 4 CSR 240-3.164, and 4 CSR 240-20.093, require evaluation, measurement, and verification (EM&V). Any request for recovery of lost revenue will have to be verified and approved by the commission prior to recovery.

At the rulemaking hearing on December 20, 2010, several participants commented that decoupling could prevent over- and under-earning and that it might present a better long-term solution than allowing recovery of lost revenues. However, section 393.1075.5, RSMo, requires the commission to conclude a docket studying any rate design modification to those currently approved by the commission prior to promulgating an appropriate rule in that regard. Decoupling represents such a change in rate design, and no docket has been opened at this time to fully explore this or other possible changes. The commission has been directed by the legislature to implement section 393.1075, RSMo, and while this proposed rule may ultimately be an intermediary step to decoupling or other changes in rate design models, promulgating a lost revenue recovery mechanism is authorized by MEEIA and, with verification methods in place, the potential for possible "gaming of the system" is minimized. The commission will make no changes to the language identified by these comments in the proposed rule or to any other language in the rule that would be related to the issue raised in these comments.

COMMENT #3: Definition of Lost Revenue. A number of participants raised an issue concerning the issue of how the proposed rule defines lost revenue. Thus, should the commission include provisions for recovery of lost revenues, these entities debate how "lost revenues" should be defined.

MEDA believes that if the commission is going to allow recovery of lost revenue, the definition of "lost revenue" should be modified to conform to the definition included in 4 CSR 240-22.020(38). MEDA sees no reason to have differing definitions in the commission's regulations.

Staff, on the other hand, does not believe that the Chapter 22 definition is appropriate because:

1) The language as drafted is "permissive" in nature and provides for the opportunity for recovery of lost revenues, rather than a guarantee. The proposed MEDA language is more explicit regarding the ability to recover lost revenues;

2) Staff opposes MEDA's proposed use of Chapter 22's definition of lost revenue, because the Chapter 22 definition is used exclusively to exclude lost revenues from the definitions of annualized costs for end-use measures, from the definition of costs for the utility cost test, and from the definition of costs for the total resource cost test. Chapter 22 does not contemplate the use of its definition of lost revenue for any other purposes, and it should not be assumed to be an appropriate definition for the MEEIA rules; and

3) The MEDA language also removes the requirements for evaluation, measurement, and verification (EM&V) of DSM program results prior to recovery of lost revenue and, therefore, allows for recovery of lost revenues on a prospective basis without any measurement and verification of DSM program results by an independent evaluator. Staff believes that if recovery of lost revenue is included in the MEEIA rules, measurement and verification of lost revenues should be required and should only be accomplished through independent EM&V on a retrospective basis. Lost revenues are based on energy usage that did not occur. In staff's opinion, it is not appropriate to increase customer's rates on guesses as to what the customers who participated in the programs would have used absent the programs without a rigorous EM&V conducted by an independent evaluator.

Staff recommends clarifying the definition of "lost revenues" by changing "net retail" to "net system retail." Staff also proposes changes in the language of the interrelated rule, 4 CSR 240-20.093(2)(G).

Staff's proposed change would apply to definition subsection (1)(U) of this proposed rule and the following subsections of the interrelated proposed rules: 4 CSR 240-3.163(1)(Q), 4 CSR 240-3.164(1)(M), and 4 CSR 240-20.093(1)(Y).

RESPONSE AND EXPLANATION OF CHANGE: The commission believes staff's proposed revision to the current definition of lost

revenue is appropriate and rejects MEDA's proposed revision for the reasons stated by staff. The commission will modify subsection (1)(U), 4 CSR 240-3.163(1)(Q), 4 CSR 240-3.164(1)(M), and 4 CSR 240-20.093(1)(Y) accordingly.

COMMENT #4: Inconsistent Definitions for Designation of Utility's Request for Approval of a Demand-Side Program. In order to clarify language in the interrelated rules related to filing a request for approval of a demand-side program, staff recommends the following definition be included in 4 CSR 240-3.163, 4 CSR 240-20.093, and 4 CSR 240-20.094: "Filing for demand-side program approval means a utility's case filing for approval, modification, or discontinuance of demand-side program(s) which may also include a simultaneous request for the establishment, modification, or discontinuance of a DSIM."

After adopting this definition, the following inconsistent terms require clarification:

1) "utility's filing for demand-side program approval" found in 4 CSR 240-3.163(1)(I) and 4 CSR 240-20.093(1)(P);

2) "utility's filing for demand-side program approval proceeding" found in subsections (1)(J), (L), (M), and (N); 4 CSR 240-3.163(1)(F), (G), (J), and (K); and 4 CSR 240.20.093(1)(M), (N), (Q), (R), and (DD);

3) "demand-side program approval proceeding" found in 4 CSR 240-3.163(9), (9)(A), and (9)(B); 4 CSR 240-20.094(1)(I) and (DD); and 4 CSR 240-20.094(1)(I), (2), (2)(G)2., (3)(B), (4), and (10); and

4) "application for demand-side program approval proceeding" found in 4 CSR 240-20.093(2)(B).

Due to the lack of a definition and the use of inconsistent terminology, it is unclear whether a "filing," "application," or "proceeding" is intended to occur. Therefore, staff recommends that, if this language remains in the proposed MEEIA rules, the recommended definition for the phrase "filing for demand-side program approval" be utilized and that consistent terminology be used throughout the proposed MEEIA rules as indicated above.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees this language should be clarified, but it also believes that inclusion of the word "case" in staff's recommended definition could add confusion. Consequently, the commission will adopt the definition and clarify the identified terms.

COMMENT #5: Definition of Probable Environmental Cost. MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC state that the statutory definition of the total resource cost test (TRC) includes "probable environmental compliance costs"; section 393.1075.2(6), RSMo. The proposed rules do not define or even use this term but incorporate instead the definition of "probable environmental costs" from the proposed integrated resource planning (IRP) rule, 4 CSR 240-22.020(46). See 4 CSR 240-3.163(1)(Q), 4 CSR 240-3.164(1)(R), 4 CSR 240-20.093(1)(Y), and 4 CSR 240-20.094(1)(V). The proposed rule 4 CSR 240-22.040(2)(B) does not provide an adequate method of calculating environmental compliance costs. It is restricted to future costs associated with a selected list of pollutants which, in the judgment of utility decision-makers, could have a significant effect on rates. SB 376 plainly means to include all costs, including present costs, and a more objective assessment, not one based on "subjective probability" in certain individuals' judgment. The commission needs to include a methodology in its rules for calculating these costs, which might include an environmental cost adder expressed in dollars or, as in Ohio, a percentage externality factor. Relying on the IRP rule to implement SB 376 has the effect of adding criteria such as the subjective judgment of utility decision-makers that, as discussed above, are not in the statute.

Related to these concerns, OPC's proposed changes to the definition of the TRC as follows: Total resource cost test or TRC means the test that compares the avoided utility costs (including probable environmental compliance costs) to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side. The present value of the program avoided utility benefits shall be calculated over the projected life of the measures installed under the program.

RESPONSE AND EXPLANATION OF CHANGE: The concerns raised by these stakeholders regarding the definitions and relationships between the terms TRC, avoided cost or avoided utility cost, and probable environmental compliance cost are interrelated to OPC concerns with the definition of TRC echoed in comment #17 in proposed rule 4 CSR 240-20.093. Consequently, the commission will address both of these concerns in its response to each comment.

The current proposed rules 4 CSR 240-3.163(1), 4 CSR 240-3.164(1), 4 CSR 240-20.093(1), and 4 CSR 240-20.094(1) have the same definitions for avoided cost or avoided utility cost, probable environmental cost, and total resource cost test.

Section 393.1075(6), RSMo, defines "total resource cost test" as a test that compares the sum of avoided utility costs and avoided probable environmental compliance costs to the sum of all incremental costs of end-use measures that are implemented due to the program, as defined by the commission in rules.

The commission proposes changes to the definitions in 4 CSR 240-3.163(1)(C), (R), and (T); 4 CSR 240-3.164(1)(A), (R), and (X); 4 CSR 240-20.093(1)(F), (Z), and (DD); and 4 CSR 240-20.094(1)(D), (W), and (Y) to address the concerns expressed by OPC and by MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC.

Additionally, the commission chooses to not include a methodology in its MEEIA rules for calculating probable environmental compliance costs. The commission notes that section (10) of the proposed rule requires the commission to complete a review of the effectiveness of this rule no later than four (4) years after the effective date at which time it may initiate rulemaking proceeding to revise the rule. Upon review, the commission will have the opportunity to revisit this issue to determine if it is appropriate to include a methodology. The commission's actions on the definitions of avoided cost, probable environmental compliance cost, and total resource cost test are consistent with the commission's actions regarding the interaction between this rule and 4 CSR 240-22 Electric Utility Resource Planning.

COMMENT #6: Definition of Staff. Staff believes that the word "staff" in 4 CSR 240-20.094(1)(AA) is too broadly defined in the proposed rule. The definition of staff in each of the draft rules would include attorneys in the Office of the General Counsel other than the general counsel who are not in the Office of the Staff Counsel. Staff is not certain that result is intended. The definitions appear at 4 CSR 240-3.163(1)(S), 4 CSR 240-3.164(1)(V), 4 CSR 240-20.093(1)(BB), and 4 CSR 240-20.094(1)(X).

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff. Not only did the commission not intend to include attorneys in the Office of the General Counsel other than the general counsel who are not in the Office of the Staff Counsel, but the commission will conform the definition of "staff" to that being formulated in the commission's Chapter 2 revisions in order to maintain consistency throughout all of its rules. "Staff" will be redefined.

COMMENT #7: Guidelines to Review Progress Toward an Expectation That the Electric Utility's Demand-Side Programs Can Achieve a Goal of All Cost-Effective Demand-Side Savings (Generally). Numerous comments were filed in relation to subsections (2)(A) and (B). Some supported the guidelines established in the proposed rules, some recommended adjustments, while others opposed them completely. The commission will consolidate the generally focused comments for purposes of its response, but it will examine other specific language not related to the general comments in other comment sections.

MIEC believes the provisions of the draft rules regarding incremental and cumulative goals for the utility programs are unlawful because these provisions are not authorized by statute. The targets are completely arbitrary and lack foundation. The provision requires that the energy savings and demand savings should be the ". . . greater of the annual realistic achievable energy savings and demand savings determined through the utility's market potential study or the following incremental annual demand-side savings goals . . .", which MIEC believes is patently unreasonable.

The MEDA members believe subsections (2)(A) and (B) identify incremental and cumulative goals for energy efficiency programs that are not authorized by the MEEIA and are unlawful. MEDA believes the proposed goals appear to have been developed without any utility-specific analyses and are inconsistent with current potential studies. If goals are to be applied, if permissible by law, MEDA believes they should be linked to reasonable and achievable savings goals supported by utility-specific potential studies.

MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC support inclusion of numerical efficiency targets, which they believe would represent reasonable progress toward the goal of capturing all cost-effective energy efficiency in Missouri. The savings goals are not "hard" targets; thus, if for some reason the utility's potential studies demonstrate clearly that these targets are out of reach, the commission may approve a plan that falls short of the targets. However, the targets provide a backstop to guard against a utility-controlled potential study that may significantly underestimate the available energy savings potential in order to establish a lower baseline for the purposes of a performance incentive. In other words, allowing the commission to use targets that reflect levels of savings that have been adopted broadly throughout the region, as well as potential studies that take into account the unique aspects of any particular service territory, strikes the appropriate balance for Missouri.

NRDC specifically refers the commission to targets and goals set in Indiana, Illinois, Iowa, New Mexico, and Ohio to demonstrate that the proposed rule sets reasonable targets to achieve reasonable progress toward all cost effective energy efficiency. NRDC states there are twenty-four (24) states with energy efficiency savings targets, either mandatory or goals, and either statutory or commission-adopted. NRDC directs the commission to a fact sheet prepared by the American Council for an Energy-Efficient Economy to review these states' programs.

OPC is concerned that the ramp up rate of these annual energy and peak demand savings goals may be too steep in years two (2013) through four (2015) and recommends that the rate be decreased in these years. The goals proposed by public counsel in years two (2013) and three (2014) are consistent with the goals in the revised energy efficiency rule currently being considered by the Texas Public Utility Commission (PUC) in its rulemaking designated as Project No. 37623. In years three (2014) and four (2015), OPC's suggested goals increase by an increment of .15% per year, rather than .2%, and in year five (2016) and thereafter, the annual energy goals increase at the same .2% increment reflected in the proposed rules. Under OPC's proposal, the cumulative reductions in annual energy are decreased relative to the cumulative annual energy reduction amounts in the proposed rule due to the lower increments of increase that occur in years two (2), three (3), and four (4). Public counsel has also proposed changes to the annual peak demand savings goals to moderate the ramp up rate in years one (2012) through three (2014). The annual peak demand savings goals in years one, two, and three have been lowered from the proposed level of one percent (1%) in each year to .7%, .8%, and .9% respectively. In year four (2015) and thereafter, the annual peak demand savings goals return to the same one percent (1%) increment found in the proposed rule. Corresponding changes to the cumulative annual energy and peak demand savings goals that appear in subsection (2)(B) of the proposed rule have also been made to the attached rules containing OPC's recommended changes.

Public Counsel has a couple of additional concerns with annual energy and peak demand savings goals that are set forth in subsection (2)(A) of the rule. The rule does not specify how the savings goals that would apply for each utility should be calculated. OPC believes that the numbers used to calculate the goals should be weather normalized and that the numbers relied on to determine the extent to which each utility has met the goals should also be weather normalized. Perhaps the rule drafters assumed there was no need to specify this in the rule. However, OPC believes this would help reduce the potential for future differences over how this portion of the rule should be applied. The rule also fails to specify the base or numerator that would be used to calculate the goals that would apply to each utility and to the calculation of the utility's performance relative to the goals. If weather normalized numbers are used, it may be appropriate to simply use the prior year's weather normalized annual energy and peak demand in order to calculate the amount of annual energy (MWhs) and annual peak demand (MWs) that correspond to the percent savings goals in each year for a particular utility.

Staff supports the inclusion of the currently drafted annual energy and demand savings targets as defined in this rule and the incremental and cumulative annual energy and demand savings goals specified in section (2), and the associated distinction in the proposed language. Staff views the distinction between the incremental and cumulative annual energy and demand savings goals as "soft goals" and the annual energy and demand savings targets as "hard goals" as appropriate.

According to staff, there is a distinction between the annual energy savings targets and annual demand savings targets as defined in this rule versus the incremental annual energy and demand savings goals and cumulative annual energy and demand savings goals specified in section (2). The goals specified in section (2) are not tied to the utility incentive component of a DSIM. Moreover, the goals in section (2) are not a mandate and may be informed by the utility's demand-side management (DSM) market potential study required by 4 CSR 240-3.164(2)(A). The goals in section (2) along with the realistic achievable annual energy savings and annual demand savings as determined through the electric utility's market potential study required in 4 CSR 240-3.164(2)(A) shall provide guidance to the commission and the electric utility for planning purposes and represent what could be viewed as reasonable progress towards achieving a statutory goal of achieving all cost-effective demand-side savings. There are no incentives or penalties tied to the goals in section (2). The annual energy savings targets and annual demand savings targets as defined in this rule are approved by the commission at the time of each demand-side program's approval. These targets are used in determining the utility's performance levels for the utility incentive component of a DSIM.

RESPONSE: Rulemaking is an exercise of the commission's quasi-legislative power. Interim goals are well within the rulemaking authority granted to the commission in section 393.1075.11, RSMo. An administrative agency has reasonable latitude regarding what methods and procedures to adopt in carrying out its statutory duties. The legislative delegation of powers and duties includes by implication everything necessary to carry out the power or duty and make it effectual or complete. "Where the grant of power is clear, the detail for its exercise need be given only within practical limits. The rest may be left to the administrative agency delegated the duty to accomplish the legislative purpose." *AT&T* v. *Wallemann*, 827 S.W.2d 217, 224-225 (Mo. App. WD 1992). Moreover, the "soft goals" at issue are guidelines to review progress and are not mandatory.

During the workshops for the proposed rule, the comment period, and the rulemaking hearing, information regarding the targets and goals employed in other states was presented to the commission, including, but not limited to, targets and goals in the states of Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Ohio, and Wisconsin. Based upon this information, and the level of DSM currently implemented by Missouri utilities, the commission's staff believed that the initial goals supported by MDNR, GRELC, and NRDC were too aggressive and it reduced the goals to the current

levels delineated in the proposed rule. As the rules are currently drafted, if the annual incremental and cumulative energy and demand savings differ from the results of the utility's potential study, the commission has the ability to use the utility-specific results of the potential study as a guideline to review progress toward an expectation that the electric utility's demand-side programs can achieve a goal of all cost-effective demand-side savings. If the goals in the proposed rule are used as opposed to the utility's own potential study, they too are merely a guideline to review progress. Because the goals are not mandatory, OPC's concern about them being too steep is unfounded. The commission will make no changes to the language identified by these comments in the proposed rule in relation to the goals contained in subsection (2)(A) or (B).

With regard to OPC's concern about ramping the annual energy and peak demand savings goals too quickly, the best way to evaluate the reasonableness of the current section (2) goals and those proposed by OPC is to compare both sets of goals to the realistic achievable potential (RAP) for energy savings and for demand savings in the Ameren Missouri DSM Market Potential Study (which is public information and was conducted using primary data collected from Ameren Missouri's customers and was published in January 2010).

Analyzing that the current proposed subsections (2)(A) and (B) goals demonstrates that the OPC's recommended goals should be rejected because:

1. The Ameren RAP cumulative energy savings potential is clearly greater than the current proposed subsection (2)(A) cumulative energy savings goal in 2015, so the OPC recommended goals would not come into play through 2015;

2. Although the Ameren RAP cumulative energy savings potential is less than either the current proposed subsection (2)(A) cumulative energy savings goal in 2020 or the OPC recommended alternative, under the current proposed subsection (2)(A) the commission would choose the greater of annual RAP energy savings as determined through the utility's market potential study or the annual cumulative energy savings goals to demonstrate that the electric utility's demand-side programs are expected to achieve all cost-effective demand-side savings. Thus, the commission would determine what a reasonable annual and cumulative energy savings goal is for Ameren each year from 2015 to 2020. There would likely be a transition at some point in time from the Ameren energy savings potentials in 2015 to the subsection (2)(A) energy savings goals in 2020; and

3. The Ameren RAP cumulative demand savings potential is clearly greater than the current proposed subsection (2)(B) cumulative demand savings goal in 2015 and in 2020, so the OPC recommended goals would not come into play through 2020.

The commission will not adopt any changes to the current language in these subsections of the proposed rule.

The commission notes that it is possible that the commission will amend this rule in the future to modify these goals. Indeed, section (10) mandates a complete review of the effectiveness of this rule no later than four (4) years after the effective date. The Utility-Specific and State-Wide Collaboratives to be mandated in section (8) will be invited to make any suggested modifications during the review process.

COMMENT #8: Guidelines to Review Progress Toward an Expectation that the Electric Utility's Demand-Side Programs Can Achieve a Goal of all Cost-Effective Demand-Side Savings (Shared Savings Mechanism). OPOWER, Inc. recommends—
1) Adopting "clear and meaningful" efficiency targets—it points to Illinois, Minnesota, and Arkansas as examples and believes the guidelines in this proposed rule should be adopted;
2) Creation of a framework where utilities can receive a performance incentive for exceeding the targets and specifically define the performance incentives—it points to sharing savings mechanism used in Oklahoma, California, and Minnesota as examples.

OPOWER notes that the commission has proposed a performance incentive (a shared savings incentive model) to allow utilities to receive a percentage of the net benefits of energy efficiency programs, but recommends that the MO PSC build on this proposal and define the exact performance incentive to reward utilities. It is important that approval of incentives and associated cost and lost revenue recovery be provided expeditiously to utilities so as to minimize uncertainty. Providing certainty and timeliness will allow utilities to better incorporate efficiency programs into their bottom line and reduce business risk. Such an approach will serve both ratepayers and shareholders alike.

OPOWER points to the following performance incentives as potential models for the MO PSC to explore. Keeping in mind that the PSC has already identified the shared savings model, OPOWER has focused its examples around that type of incentive. OPOWER firmly believes that the final incentive mechanism adopted by the PSC will reflect the Missouri regulatory landscape. OPOWER is not suggesting that Missouri adopt any of these exact mechanisms. They wish simply to point out other shared savings incentive structures that have been adopted in other states that may provide some insights.

• Shared Savings Mechanism I (Oklahoma): The Oklahoma regulator has approved a different type of shared savings mechanism for both Oklahoma Gas and Electric (OG&E) and PSO (AEP). OG&E can earn up to twenty-five percent (25%) of net benefits for each measure with a total resource cost (TRC) of greater than 1.0 and fifteen percent (15%) of net benefits for programs where TRC is less than 1.0. PSO may earn up to twenty-five percent (25%) net benefits for programs where "savings can be estimated" and fifteen percent (15%) for other programs where savings cannot be accurately identified (i.e., education and marketing programs). This incentive structure has had the desired effect of rapidly ramping up efficiency programs in Oklahoma.

• Shared Savings Mechanism II (Minnesota): In 2010, Minnesota revamped its incentive structure to a shared savings mechanism. When a utility achieves energy savings equal to one and one-half percent (1.5%) of retail sales, electric utilities will earn 0.09 cents for each kWh saved, and gas utilities will earn 4.50–6.50 times the number of Mcf saved.

• Shared Savings Mechanism III (California): Utilities are able to earn back a percentage of net benefits based on what percentage of goals they achieve.

o Over 100%: If the utilities achieve this threshold of savings, then utilities can achieve twelve percent (12%) of net benefits.

o 85–100%: If the utilities achieve this threshold of savings, then utilities can receive nine percent (9%) of net benefits. (In this context "net benefits" means monetary benefits to the consumer, or, in other words, how much consumers save on energy efficiency.)

o 65–85%: No earnings or penalties.

o 0–65%: Utilities are penalized 5 cents/kWh, $25/KW, 45 cents/therm below goals (penalties capped at $450 million per utility).

The advantage of this incentive structure is that it rewards utilities for strong performance, while only penalizing utilities for severely underperforming; and

3) Development of a comprehensive set of guidelines to measure the impact of energy efficiency programs, known as a Technical Resource Manual.
To encourage transparent, verifiable energy savings, MO PSC should develop a comprehensive set of guidelines for measuring the impact of energy efficiency programs, also known as a Technical Resource Manual (TRM). A TRM defines the proper method for calculating savings for specific measures across the residential, commercial, and

industrial sectors. A Missouri TRM would provide the PSC and MO taxpayers with clearer insight into how estimates of energy savings are generated. Regulators in states with technical resource manuals, including Pennsylvania, Vermont, and Massachusetts, are more confident than those without them that the efficiency savings claimed by their utilities are real and verified.

Measures typically fall into two (2) broad categories.

• *Asset-based (installed measures)*: algorithms are assigned for each individual measure in order to calculate deemed savings values. Examples of asset-based programs include CFL light bulbs, energy efficient appliances, and electric motors.

• *Non-Asset based (non-installed measures)*: for programs where a deemed savings approach is insufficient or not feasible, the TRM establishes protocols for how to measure program setup and net impact. Examples of non-asset based programs include behavior-based programs, home energy audits, and large-scale plant expansions.

A TRM not only provides clarity in measuring and reporting savings, but also regulatory certainty for all stakeholders. In short, a TRM ensures that ratepayer money is being spent to generate cost-effective savings that provide net economic benefits to ratepayers.

RESPONSE AND EXPLANATION OF CHANGE: OPOWER agrees that the commission has proposed a performance incentive (a shared savings incentive model) to allow utilities to receive a percentage of the net benefits of energy efficiency programs and the commission has established a framework for lost revenue recovery. The commission does not believe it is beneficial to attempt to be more exact with regard to performance incentives to reward utilities at this time. Rather, it is best to allow the maximum amount of flexibility to structure these mechanisms. Nothing precludes the commission from considering shared savings incentive structures on a case-by-case basis as it considers individual mechanisms.

With regard to the TRM, the commission supports the current proposed language in subsection (8)(B). The commission prefers a statewide technical resource manual which is encouraged in subsection (8)(B) through the stakeholder process. The commission believes the proposed rule makes the appropriate step towards achieving the goal of all cost-effective demand-side savings and will not alter the proposed rule to make it more specific or comprehensive at this time.

The commission appreciates OPOWER's comments and emphasizes that it is not foreclosing any options for future revisions. As was noted in the response to comment #7, it is possible that the commission will amend this rule in the future to modify these goals. Indeed, section (10) mandates a complete review of the effectiveness of this rule no later than four (4) years after the effective date.

In the process of reviewing the issue concerning the TRM, the commission noticed some internal inconsistencies with the way the inter-related rules made reference to the TRM. In some sections it referred to the TRM as the "technical resource manual" and in others it referred to the TRM as the "technical reference manual." The proper designation is "technical resource manual" and the commission will correct language in the following sections of the MEEIA rules 4 CSR 240-20.093(1)(CC) and (7)(E) and 4 CSR 240-20.094(1)(C) and (8)(B).

COMMENT #9: Guidelines to Review Progress Toward an Expectation that the Electric Utility's Demand-Side Programs Can Achieve a Goal of All Cost-Effective Demand-Side Savings (Achievable Versus Realistic Achievable Language). MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC believe that subsections (2)(A) and (B) should simply refer to "achievable" instead of "realistic achievable" energy savings and demand savings. A utility can use either realistic achievable potential or the numeric goals in demonstrating progress toward the statutory goal of "all cost-effective demand-side savings" pursuant to subsections (2)(A)and (B). Given the potentially critical role of the utility potential study in creating the performance goals and subsequently determining the level of performance incentive, it is important that the potential study be conducted in a collaborative way that provides confidence in its results.

The definitions of potential in the proposed rule, taken together, could significantly and adversely influence commission review of progress toward the legislative goal of "achieving all cost-effective demand-side savings" as well as future utility conduct of potential studies. The core distinction in National Action Plan for Energy Efficiency (NAPEE)'s guide is between "achievable potential" and "program potential." As NAPEE uses the terms, "achievable potential" takes expected program participation into account and is the reference point for considering various levels of "program potential" that are based on different levels of utility funding and implementation. This is in contrast to an assumption of an absolute distinction between "maximum" and "realistic" achievable potential that introduces an analytic weakness and which does not acknowledge that there can be many levels of "achievable potential" based on the level of funding and aggressiveness of implementation that the company elects to pursue. Estimates from a market potential study are highly variable, depending on the measures included in a study, the range of customer incentives considered in the study questionnaires, and the assumptions used to calculate energy savings forecasts. Using the current definitions in the proposed rule could result in the following adverse consequences: 1) The draft language could limit the commission's view of the potential for cost-effective demand-side savings to the level of funding and aggressiveness of implementation that the company elects to assume in its potential study; and 2) Future utility potential studies could focus unduly on establishing a single level of "realistic" achievable potential, limiting their study of the range of options under different levels of program implementation. This would be most likely to occur if the rule requires the utility to conduct potential studies but fails to establish adequate standards for conducting them.

RESPONSE: Similar to the commission's response concerning the proposed changes to definitions of economic, technical, realistic, maximum achievable, in interrelated rule 4 CSR 240-3.164, adopting this proposed change will result in the most aggressive DSM program scenarios possible. The commission believes this will result in an expectation of very high goals that are unrealistic or unattainable in the early stages of implementing the MEEIA. The commission will not substitute or change the current definitions of these terms.

COMMENT #10: Guidelines to Review Progress Toward an Expectation That the Electric Utility's Demand-Side Programs Can Achieve a Goal of All Cost-Effective Demand-Side Savings (Penalty Language). The MEDA stakeholders believe that section (2) is offensive to the language in section 393.1975.3, RSMo, that positively encourages demand-side investment. MEDA states there is no language in the statute authorizing the implementation of penalties or adverse consequences and this language should be deleted.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees and this language shall be removed. Additionally, the commission will add new language to this section.

COMMENT #11: Applications for Approval of Electric Utility Demand-Side Programs or Program Plan. MEDA is concerned that the language used in section (3) is unclear.

MEDA believes the language in this section must be clarified to ensure that any transition from existing demand-side programs in effect pursuant to an existing and approved tariff sheet must ensure the recovery of lawfully approved and unrecovered costs, particularly in the event that such tariffed program is being discontinued.

RESPONSE: For clarity the commission notes that DSM programs have tariffs currently and under the proposed MEEIA rules programs will have tariffs; DSM plans do not and will not have tariffs. See subsection (3)(D). The language of the proposed rules is clear that the intent is to allow recovery of programs that are already tariffed, as

long as they are included in the application for program approval. The commission finds no reason to modify the current language in this subsection.

COMMENT #12: The Interplay Between This Rule and 4 CSR 240-22, Electric Utility Resource Planning. MDNR, NRDC, Sierra Club, GRELC, and Renew Missouri have expressed concerns regarding the interplay between the proposed rules to implement MEEIA and the commission's Chapter 22 rules involving IRP. These concerns implicate proposed rules 4 CSR 240-3.164(2)(B)(3) (filing and submission requirements) and 4 CSR 240-20.094(3)(A)3 (demand-side programs). Consequently, the commission will address those comments in both rules.

MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC would like for proposed rules 4 CSR 240-3.164(2)(B)3. and 4 CSR 240-20.094(3)(A)3. to be eliminated. Paragraph (3)(A)3. says the PSC must approve programs that pass the Total Resource Cost Test, but it adds the following condition, that the programs "are included in the electric utility's preferred plan or have been analyzed through the integration process required by 4 CSR 240-22.060 to determine the impact of the demand-side programs and program plans on the net present value of revenue requirements of the electric utility." However, the criterion of the MEEIA is the cost effectiveness of demand-side programs; section 393.1075.3.–4., RSMo. Under the latest Chapter 22 rewrite, the primary criterion is the minimization of utility costs, but utilities may use other critical factors; 4 CSR 240-22.010(2). The most cost-effective demand-side portfolio could fail the IRP tests if it were packaged with a bad set of supply-side resources.

Selection of a preferred resource plan (PRP) is contingent on the policy objectives and performance measures and also on the judgment of utility decision-makers; 4 CSR 240-22.070(1). While it would appear from 4 CSR 240-22.070(1)(C) that a PRP will maximize demand-side resources, it is not clear how the winnowing of ARPs assembled under 4 CSR 240-22.060 will automatically yield a PRP with the most cost-effective demand-side portfolio; the minimally compliant ARP of 4 CSR 240-22.060(3)(A)1. and the optimally compliant ARP of 4 CSR 240-22.060(3)(A)5. could both fail during the analysis prescribed in 4 CSR 240-22.060(4)–(7). Furthermore, even the demand-side component of the PRP is subject to the judgment of utility decision-makers; they decide whether the PRP is in the public interest and achieves state energy policies; 4 CSR 240-22.070(1)(C). Lowest present value of revenue requirement (PVRR), IRP policy objectives, performance measures, critical uncertain factors, and decision-makers' judgment are all criteria absent from the MEEIA.

According to MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC, there is a disconnect between 4 CSR 240-22.060 and 4 CSR 240-22.070. 4 CSR 240-22.060(3)(A)1.–5. prescribes a special set of alternative resource plans for renewable and demand-side resources. These include a minimally compliant demand-side plan (the "compliance benchmark"), an "aggressive" plan defined as maximum technical potential (which is an academic exercise), and an optimally compliant plan (minimal compliance with legal mandates but maybe something more).

It is unclear what happens to these plans. They must go through the analysis of 4 CSR 240-22.060(4)–(7). The preferred resource plan must use demand-side resources to the "maximum" amount that complies with legal mandates; 4 CSR 240-22.070(1)(C). This differs from both the minimal compliance benchmark ARP and the "optimal" ARP. Indeed, 4 CSR 240-22.070 does not even say that the PRP must be one of the ARPs in 4 CSR 240-22.060.

According to MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC, the status of the PRP is uncertain. The PRP is a moving target. It can change at any time and be replaced by a contingent plan if the PRP ceases to be appropriate for any reason; 4 CSR 240-22.070(4). The PRP can become obsolete if it ceases to be consistent with the utility's business plan or acquisition strategy; 4 CSR 240-22.080(12). A utility can get variances from the rule; 4 CSR 240-22.080(13). A utility may request action in other cases that is inconsistent with the PRP as long as it provides a detailed explanation; 4 CSR 240-22.080(17). Under the MEEIA rule; 4 CSR 240-20.094(3)(A)3., the utility can disregard the PRP, but whatever programs it offers must first go through 4 CSR 240-22.060 integration, which still involves all the criteria itemized above that are not in the MEEIA.

According to MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC, MEEIA outranks Chapter 22. If the IRP rule is to perform that role, it must be modified to accommodate the MEEIA. SB 376 is a delegation of specific rulemaking authority to achieve the MEEIA's purposes; section 393.1075.11, RSMo. Chapter 22, by contrast, has no specific legislative authority. Its status as an internal commission rule is reflected in the limited, procedural nature of the commission's review of utility IRPs: only deficiencies in Chapter 22 compliance are reviewable, not the substance of the plans; 4 CSR 240-22.080(7), (8), and (16).

According to MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC, MEEIA, if the commission subordinates the MEEIA to Chapter 22, it will be imposing criteria not prescribed by the legislature and will be unlawful. The commission cannot use its general rulemaking powers under sections 386.250(6) and 393.140(11), RSMo, to make rules inconsistent with the MEEIA. To do so would be to exercise a legislative function in violation of the separation of executive from legislative powers; Mo. Constitution Article II, section 1. Chapter 22 and the MEEIA can only be harmonized by ensuring that a demand-side portfolio that satisfies the criteria of the MEEIA automatically becomes part of the preferred resource plan, not the other way around.

Staff responded to these concerns in the following manner:

Various groups expressed opposition regarding the requirement that proposed demand-side programs be analyzed through the integration analysis process required by Chapter 22 Electric Utility Resource Planning. Some of the concerns expressed by these stakeholder organizations were that the process is a burdensome requirement and that it may not result in a set of demand-side resources that are adequate to meet a MEEIA goal of achieving all cost-effective demand-side savings; therefore, the results of the Chapter 22 integration analysis process should not be a limiting factor in the approval of the demand-side programs submitted under this rule. These stakeholder groups contend that the TRC test should be an adequate measure, by itself, to determine which demand-side programs are proposed and approved. Staff does not agree with the concerns of these stakeholder groups.

According to staff, Missouri's Chapter 22 Electric Utility Resource Planning rules are expected to continue to result in an ongoing and dynamic electric utility resource planning process to "optimize" both supply-side resources and demand-side resources at the lowest cost to electricity ratepayers while taking into consideration risk and uncertainty associated with critical uncertain factors such as: future customer loads (for energy and for demand), future fuel and purchased power prices, future economic conditions, future legal mandates, and new technology. Simply using the TRC test to determine which demand-side programs are proposed and approved does not give any consideration to risk and uncertainty associated with critical uncertain factors. Paragraph (3)(A)3. requires that proposed demand-side programs "are included in the electric utility's preferred plan or have been analyzed through the integration process required by 4 CSR 240-22.060 to determine the impact of the demand-side programs and program plans on the net present value of revenue requirements of the electric utility." Staff supports this requirement as it places demand-side resources on an equal basis with supply-side resources. See section 393.1075, RSMo. The requirement that proposed demand-side programs be analyzed through the integration analysis process is consistent with MEEIA. Moreover, the requirement in subsection (3)(A) indicates that the integration analysis should be completed and filed as required by 4

CSR 240-3.164(2)(B)3., but does not state that the results would necessarily be a limiting factor in the approval of demand-side programs.

Finally, staff would like to clarify for the commission that should the electric utility determine that it wants to propose demand-side programs or program plans which are not included in the electric utility's preferred resource plan, a completely new Chapter 22 analysis and new preferred resource plan are not necessary. The only requirement of subsection (3)(A) is that demand-side programs and program plans "have been analyzed through the integration process required by 4 CSR 240-22.060 to determine the impact of the demand-side programs and program plans on the net present value of revenue requirements of the electric utility." Further, such integration analysis to determine the impact of individual demand-side programs on the net present value of revenue requirements of the electric utility have been requested by staff during 2010 on several occasions for demand-side programs which were not in the preferred resource plans of the individual electric utilities. The electric utilities performed the integration analysis, reported the incremental change to the net present value of revenue requirements, and communicated to staff that the integration analysis was not burdensome taking no more than a day or two (2) to set up and run the integration analysis with the proposed demand-side program.

RESPONSE: The commission agrees with its staff. MEEIA states: "The commission shall consider the total resource cost test 'a' preferred cost-effectiveness test." MEEIA does not state the total resource cost test shall be "the" cost-effectiveness test or even (as stated in the formal comments of the stakeholder group) "the primary" cost-effectiveness test. So, clearly there is additional opportunity for the commission to choose a more comprehensive process to determine what demand-side resources constitute all cost-effective demand-side savings than simply using the total resource cost test. If the commission stops with the results of the TRC, then demand-side analysis is given preferential treatment over supply-side analysis which is contrary to the MEEIA.

While "a" goal of MEEIA is to achieve all cost-effective demand-side savings, the stated fundamental objective of the proposed Chapter 22 rules is to provide the public with energy services that are safe, reliable, and efficient, at just and reasonable rates, in a manner that serves the public interest. This objective further enhances the MEEIA, and is also consistent with sound public policy. This objective requires that the utility:

A. Consider and analyze demand-side resources and supply-side resources on an equivalent basis;

B. Use minimization of the present worth of long-run utility costs as the primary selection criterion in choosing the preferred resource plan; and

C. Explicitly identify and, where possible, quantitatively analyze any other considerations which are critical to meeting the fundamental objective of the resource planning process, but which may constrain or limit the minimization of the present worth of expected utility costs. These considerations shall include, but are not necessarily limited to, mitigation of risks associated with critical uncertain factors (such as future electricity loads, future economic conditions, future fuel and purchased power prices, and future legal mandates including environmental regulations). Finally, Chapter 22 risk analysis also considers the mitigation of rate increases associated with alternative resource plans.

The stakeholder group is suggesting that the total resource cost test is the only analysis needed to determine all cost-effective demand-side savings. The TRC may use as few as a single avoided cost amount for a year. Chapter 22 uses the total resource cost test to screen demand-side resources. Chapter 22 then requires further analysis of all resources that have passed screening analysis (both supply-side resources and demand-side resources) through integration analysis. The integration process required by Chapter 22 requires the utilities to look at all eight thousand seven hundred sixty (8,760) hours of the year. The demand-side and supply-side resources that best meet the load requirements of all eight thousand seven hundred sixty (8,760) hours each year are included in the preferred resource plan. The integration process is followed by risk analysis and finally strategy selection by the utility's decision-makers. The programs that survive this rigorous screening should be the programs for which the utilities request the commission's approval and receive "non-traditional" rate making treatment. These programs are also the most likely to be the best use of the ratepayers' money.

While this stakeholder group asserts that it is inappropriate that the judgment of utility decision-makers be used for the determination of all cost-effective demand-side savings for its utility, ultimately, it is the utility decision-makers who decide which alternative resource plan best meets the Chapter 22 objective for its utility. The utility decision-makers (and not the total resource cost test) decide which DSM programs and demand-side programs investment mechanisms are proposed to the commission. And these same utility decision-makers will be accountable for the delivery and performance of their utility's commission-approved DSM programs.

Finally, as the staff clarifies, should the electric utility determine that it wants to propose demand-side programs or program plans which are not included in the electric utility's preferred resource plan, a completely new Chapter 22 analysis and new preferred resource plan are not necessary. The only requirement is that the programs and program plans be analyzed through the integration process required by 4 CSR 240-22.060.

The commission will make no changes to the language identified by these comments in the proposed rule or to any other language in the rule that would be related to the issue raised in these comments.

COMMENT #13: Applications for Approval of Modifications to Electric Utility Demand-Side Programs. MEDA proposes two (2) changes to the language in section (4), by changing the "demand-side program" to "demand-side plan" and revising the annual budget language to a three (3)-year budget. These changes would allow flexibility in the timing of applications for modification of the plan and reduce the number of applications. MEDA states the proposed rule allows very little flexibility as most changes within a program would trigger the requirement to file for commission approval of that change. Changing the focus to the demand-side program plan would require Missouri utilities to seek approval when making major modifications to its demand-side plan. In other words, if a utility plans to significantly deviate from the program which it has filed with the commission, then filing for a modification makes sense. Filing every time a utility needs to reallocate funds between already approved programs does not accomplish any purpose. The section, according to MEDA, should be corrected by changing "demand-side program annual plan" to "demand-side plan."

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with MEDA and will adopt its suggested change.

COMMENT #14: Provisions for Customer to Opt-Out of Participation in Utility Demand-Side Programs. MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC are concerned with the current language in section (6). According to these stakeholders, section 393.1075.7, RSMo, allows three (3) categories of large customers to opt out of utility offered programs. It allows customers in two (2) categories, i.e., those with a demand over five thousand (5,000) kW at one (1) or more accounts and those who operate an interstate pipeline pumping station, to opt out without any requirement that they capture all cost-effective energy efficiency potential in their operations. The proposed rule allows customers in the third category, those with a demand over two thousand five hundred (2,500) kW in aggregate from all their accounts, to opt out if they can demonstrate to staff that their internal programs will produce savings at least equal to those expected from utility provided programs. However, the rule does not specify the criteria by which staff is to evaluate the validity of the customer's projected savings; all it requires is a "demonstration" that a customer qualifies for the opt-out; paragraph (6)(C)3. These stakeholders believe the proposed

rules can be improved by imposing as a condition of opt-out a requirement that those "opt-out" customers with demand over two thousand five hundred (2,500) kW in aggregate from all their accounts periodically demonstrate, subject to independent verification, that they have used and/or are using their own funds to install efficiency measures that are cost-effective to the same extent and according to the same avoided cost assumptions and cost-effectiveness tests as those used by their utility.

Walmart Stores East, LP, and Sam's East (Walmart), commented on the opt-out language and supports the current language. Walmart is opposed to any additional requirements because it believes the statute is clear in that it provides that the customer is the one that elects to notify the electric utility that it wants to opt out. Walmart does not believe there is any room to impose any requirements.

RESPONSE: The commission does not believe that MEEIA conveys it any authority to place the condition requiring periodic demonstrations and independent verification that customers who have opted out have used and/or are using their own funds to install efficiency measures that are cost-effective to the same extent and according to the same avoided cost assumptions and cost-effectiveness tests as those used by their utility. The commission will not adopt the suggestion from the environmental stakeholders to add such a condition.

COMMENT # 15: Revocation. MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC have concerns about the language in subsection (6)(H). These entities request that the language which states that customers "revoke an opt-out by providing written notice to the utility and commission fourteen (14) to sixteen (16) months in advance of the calendar year for which it will become eligible for the utility's demand-side program's costs and benefits" be changed to reduce this period to six (6) months. If they opt back in, and participate in a program, they should be required to remain in for the number of years over which the cost of that program is being recovered, or until the cost of their participation in that program has been recovered. The changes proposed by these stakeholders to subsection (6)(H) may also require changes to subsection (6)(F).

RESPONSE AND EXPLANATION OF CHANGE: There are two (2) parts to this request. First is the recommendation to reduce the notification deadline for revoking an opt-out from participation in a demand-side program, and second is the recommendation to place conditions on entities opting back into a demand-side program. With regard to the first suggestion, the commission agrees to shorten this time period, but it will modify the language in subsection (6)(H) by deleting "fourteen (14) to sixteen (16) months" and substituting "two (2) to four (4) months."

With this change the advanced notice in subsection (6)(H) for any customer revocation notice will be made during the "same window of time" (no earlier than September 1 and not later than October 30 to be effective for the following calendar year) as any customer notice for opt-out in subsection (6)(F) and will more accurately accomplish the same objective as the proposed change to "six (6) months". In this way the opt-out and revocation of opt-out will both be effective for the following calendar year.

With regard to the second suggestion, section 393.1075(8), RSMo, authorizes the commission to place conditions on entities desiring to opt back into a demand-side program. The commission agrees with these stakeholders and will adopt their suggested condition, thus, if a customer opts back in, and participates in a program, they will be required to remain in for the number of years over which the cost of that program is being recovered, or until the cost of their participation in that program has been recovered. The commission will add new language to subsection (6)(H).

COMMENT #16: Collaborative Guidelines. MDNR, NRDC, Sierra Club, Renew Missouri, and GRELC request that subsection (8)(B) be completely replaced with the following language:

Statewide Collaboratives. Electric utilities and their stakeholders will form a statewide advisory collaborative:

(1) To receive and share information on new developments and programs;

(2) To develop a Missouri Technical Resource Manual (TRM);

(3) To explore joint programs where such programs could reduce program costs and increase savings;

(4) To provide a forum for national and regional experts to discuss developments in the energy efficiency, demand-side management, demand response, and renewable energy domains; and

(5) To discuss program results, including successes, challenges and mid-course corrections. Collaborative meetings will be led by an independent third-party selected by the commission.

This third party will—

1. Be responsible for organizing, facilitating, and recording collaborative meetings;

2. Prepare meeting agendas based on input from collaborative participants. Agendas may propose time for both individual utility topics as well as topics of statewide interest and concern;

3. Schedule meetings bi-annually, and ensure that meetings:

i. Are publicly announced and open to any interested party,

ii. Include representatives from all interested groups and

iii. Are structured to ensure that active participants have the opportunity to interact on necessary matters; and

4. Prepare minutes of each meeting, allowing all participants an opportunity to review and comment on the minutes.

The Statewide DSM Collaborative and the Technical Resource Manual (TRM) are described in 4 CSR 240-20.093 and 4 CSR 240-20.094. The TRM is defined in 4 CSR 240-20.093(1)(BB): Statewide technical resource manual means a document that is used by electric utilities to assess energy savings and demand savings attributable to energy efficiency and demand response; and the role of the TRM in the evaluation, measurement and validation (EM&V) of savings is described in 4 CSR 240-20.093(7)(E): Electric utility's EM&V contractors shall use, if available, a commission approved statewide technical resource manual when performing EM&V work. This statewide process (the Statewide Collaborative) and common documentation (the TRM) are essential to developing a common perspective among Missouri utilities and stakeholders. These common activities will help to educate all parties about successful program designs and savings opportunities. Additionally, developing a TRM will provide needed information for assessing the outcomes of utility programs. The DSM portfolios of individual electric utilities feature many common programs. Each utility has a residential lighting program, a Home Performance with Energy Star program, a set of appliance rebate and maintenance programs, a set of commercial and industrial rebate programs, and a set of educational programs. Having a common forum to discuss the implementation of these common programs, to explore new program designs, and to investigate new technologies will help Missouri utilities to improve energy savings throughout the state. These entities request that the rule language in subsection (8)(B) be changed to establish the procedures to require the creation of a statewide collaborative meeting and the establishment of a common TRM.

OPC supports the position offered by these stakeholders.

RESPONSE AND EXPLANATION OF CHANGE: The commission believes that at this early stage of implementing these proposed rules that it is important to maintain flexibility. The commission also sees significant practical and financial hurdles associated with attempting to utilize a third-party administrator in association with the collaboratives. Consequently, the commission will not adopt the suggested replacement of the entire subsection on collaboratives.

Examining this issue, however, has led the commission to the conclusion that the collaborative should be mandatory and not discretionary. The commission will strike the words "are encouraged to" from subsections (8)(A) and (B) and replace those words with the word "shall."

COMMENT #17: Specific Language Changes. OPC believes that additional language should be added to various definitions in sections

(1) and (3) to provide clarity and consistency with the statutory language in MEEIA.

It should be noted that because OPC attempted to incorporate its red-line filing from July 23, 2010 (prior to the official comment period), and because changes to the language of the proposed rule had been made after that date, but prior to the submission of the proposed rules for its publication in the *Missouri Register*, not all of the subsections of OPC's July 23, 2010, filing match the current proposed rule.

OPC proposes the following changes for 4 CSR 240-20.094(1):

(O) Evaluation, measurement, and verification or EM&V means the performance of studies and activities intended to evaluate the process of the utility's program delivery and oversight and to estimate the energy and demand savings, cost effectiveness, and other effects from demand-side programs.

(P) Hard-to-reach customers means Residential customers with an annual household income at or below 200% of the federal poverty guidelines

(P) Interruptible or curtailable rate means a rate under which a customer receives a reduced charge in exchange for agreeing to allow the utility to interrupt or curtail some or all of the supply of electricity under certain specified conditions.

(Q) Load management means load control activities that result in a reduction in peak demand on an electric utility system or a shifting of energy usage from a peak to an off-peak period or from high-price periods to lower price periods.

(S) Total resource cost test or TRC means the test that compares the avoided utility costs (including probable environmental compliance costs) to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver and evaluate each demand-side. The present value of the program avoided utility benefits shall be calculated over the projected life of the measures installed under the program.

OPC proposes the following changes for 4 CSR 240-20.094(3)(A):

2. Include initiatives that are expected to achieve substantial program participation by hard to reach customers.

3. Reflect efforts undertaken by the utility to increase the cost effectiveness of, and/or level of participation in, its programs through coordinated or jointly-delivered programs with other electric and gas utilities.

3. Have reliable evaluation, measurement and verification plans;

4. Are estimated to be beneficial to all customers in the customer class in which the program is proposed, regardless of whether the program is utilized by all customers in that customer class; and

5. Are included in the electric utility's preferred plan or have been analyzed through the integration process required by 4 CSR 240-22.060 to determine the impact of the demand-side programs and program plans on the net present value of revenue requirements of the electric utility.

OPC proposes the following changes for 4 CSR 240-20.094(3)(B):

1. If a program is targeted to low-income customers, the electric utility must also state how the electric utility will assess the expected and actual effect of the program on the utility's bad debt expenses and customer arrearages and disconnections.

RESPONSE: Perhaps OPC has not revisited its comments from July, 23, 2010, but the current version of the proposed rule adopted language in 4 CSR 240-20.094(3)(B) is identical to the OPC's proposed language. Finding there is no distinction between the current language and this proposed change, the commission will not amend that subsection. Further, the commission has addressed OPC's concern with regard to the definition of the total resource cost test in its response to comment #5 and it need not repeat that response here.

With regard to the remaining changed proposed by OPC above, the commission notes that when OPC filed these proposed changes, it stated in its filing: "Many of these changes are self-explanatory (e.g., to provide clarity or consistency with the language in MEEIA) and some are described in the comments below." The commission addressed the specific comments that OPC provided an explanation for in other portions of this order or in the orders of the interrelated MEEIA rules. With regard to these remaining suggestions, the commission notes that while it appreciates OPC's suggestions, offering them without providing an explanation or explaining how these changes would interact with and/or change the interrelated rules, by simply stating these changes are "self-explanatory" is unacceptable. It does not allow any other stakeholder the opportunity to address the specifics of the proposed changes and creates the potential for mischief.

Nevertheless, the commission has examined these proposed changes and does not believe they add any clarity to the current language. Finding there is no benefit to the proposed changes, the commission will not adopt them. The commission notes it is possible that the commission will amend this rule in the future. Indeed, 4 CSR 240-20.094(10) mandates a complete review of the effectiveness of this rule no later than four (4) years after the effective date. During the review process the commission can revisit these proposed changes, and any others that OPC or any other entity would like to present and fully develop.

COMMENT #18: Requirements for Semi-Annual Adjustments of DSIM Rates. The MEDA stakeholders express concerns over the language in 4 CSR 240-20.093(4)(A)–(D). The language, according to MEDA, sets forth the requirements for semi-annual adjustments of DSIM and it should be modified to apply not only to the cost recovery component of the DSIM, but also to all components of the DSIM, i.e., cost recovery, lost margins or lost revenues, and incentive. The MEDA stakeholders recommend that in order to comply with the intent of the MEEIA—in particular timely cost recovery to utilities, aligning utility financial incentives with helping customers use energy efficiently, and providing timely earnings opportunities associated with cost-effective energy efficiency—adjustments of DSIM rates between general rate proceedings should apply to all components of the DSIM. These three (3) components must be addressed in concert to provide a sustainable business model for utilities to pursue DSM programs and both benefit customers and satisfy shareholders.

RESPONSE AND EXPLANATION OF CHANGE: These proposed changes for section (4) of 4 CSR 240-20.093 created a ripple effect with this rule that the commission must address in this proposed rule. The commission will not modify the language in 4 CSR 240-20.093(4) as proposed by MEDA to allow adjustments to the DSIM utility lost revenue requirement or to the DSIM utility incentive revenue requirement during the semi-annual adjustment to DSIM rates. The commission notes determination of the DSIM utility lost revenue requirement and the DSIM utility incentive revenue requirement are dependent upon measurement and verification performed by an EM&V contractor and documented in EM&V reports. Such EM&V reports will be performed in accordance with EM&V plans for each demand-side program and demand-side program plan required by 4 CSR 240-3.164(2)(C)13. and will likely be published no more frequently than annually and will not be available semiannually. However, the DSIM cost recovery revenue requirement is not dependent upon measurement and verification performed by an EM&V contractor and documented in EM&V reports but rather depends upon the contemporaneous accounting records of each electric utility.

In the process of reviewing this issue the commission noticed some internal inconsistencies and finds it is necessary to make changes to language contained in 4 CSR 240-20.093(1) and (2). Similarly, three (3) definitions in sections (1) and (3) must be changed to maintain conformity throughout all four (4) MEEIA rules. These changes should provide clarification to this issue.

4 CSR 240-20.094 Demand-Side Programs

(1) As used in this rule, the following terms mean:

(C) Annual net shared benefits means the utility's avoided costs measured and documented through evaluation, measurement, and

verification (EM&V) reports for approved demand-side programs less the sum of the programs' costs including design, administration, delivery, end-use measures, incentives, EM&V, utility market potential studies, and technical resource manual on an annual basis;

(D) Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from demand-side programs' energy savings and demand savings associated with generation, transmission, and distribution facilities including avoided probable environmental compliance costs. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs;

(L) DSIM cost recovery revenue requirement means the revenue requirement approved by the commission in a utility's filing for demand-side program approval or a semi-annual DSIM rate adjustment case to provide the utility with cost recovery of demand-side program costs based on the approved cost recovery component of a DSIM;

(M) DSIM utility incentive revenue requirement means the revenue requirement approved by the commission to provide the utility with a portion of annual net shared benefits based on the approved utility incentive component of a DSIM;

(N) DSIM utility lost revenue requirement means the revenue requirement explicitly approved (if any) by the commission to provide the utility with recovery of lost revenue based on the approved utility lost revenue component of a DSIM;

(S) Filing for demand-side program approval means a utility's filing for approval, modification, or discontinuance of demand-side program(s) which may also include a simultaneous request for the establishment, modification, or discontinuance of a DSIM.

(T) Interruptible or curtailable rate means a rate under which a customer receives a reduced charge in exchange for agreeing to allow the utility to withdraw the supply of electricity under certain specified conditions;

(U) Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net system retail kWh delivered to jurisdictional customers below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V;

(V) Preferred resource plan means the utility's resource plan that is contained in the resource acquisition strategy most recently adopted by the utility's decision-makers in accordance with 4 CSR 240-22;

(W) Probable environmental compliance cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility's decision-makers, may be imposed at some point within the planning horizon which would result in environmental compliance costs that could have a significant impact on utility rates;

(X) Staff means all personnel employed by the commission, whether on a permanent or contract basis, except: commissioners; commissioner support staff, including technical advisory staff; personnel in the secretary's office; and personnel in the general counsel's office, including personnel in the adjudication department. Employees in the staff counsel's office are members of the commission's staff;

(Y) Total resource cost test, or TRC, means the test of the cost-effectiveness of demand-side programs that compares the avoided utility costs to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side program; and

(Z) Utility incentive component of a DSIM means the methodology approved by the commission in a utility's demand-side program approval proceeding to allow the utility to receive a portion of annual net shared benefits achieved and documented through EM&V reports.

(2) Guideline to Review Progress Toward an Expectation that the Electric Utility's Demand-Side Programs Can Achieve a Goal of All Cost-Effective Demand-Side Savings. The goals established in this section are not mandatory and no penalty or adverse consequence will accrue to a utility that is unable to achieve the listed annual energy and demand savings goals.

(3) Applications for Approval of Electric Utility Demand-Side Programs or Program Plans. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility may file an application with the commission for approval of demand-side programs or program plans by filing information and documentation required by 4 CSR 240-3.164(2). Any existing demand-side program with tariff sheets in effect prior to the effective date of this rule shall be included in the initial application for approval of demand-side programs if the utility intends for unrecovered and/or new costs related to the existing demand-side program be included in the DSIM cost recovery revenue requirement and/or if the utility intends to establish a utility lost revenue component of a DSIM or a utility incentive component of a DSIM for the existing demand-side program. The commission shall approve, approve with modification acceptable to the electric utility, or reject such applications for approval of demand-side program plans within one hundred twenty (120) days of the filing of an application under this section only after providing the opportunity for a hearing. In the case of a utility filing an application for approval of an individual demand-side program, the commission shall approve, approve with modification acceptable to the electric utility, or reject applications within sixty (60) days of the filing of an application under this section only after providing the opportunity for a hearing.

(4) Applications for Approval of Modifications to Electric Utility Demand-Side Programs. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility shall file an application with the commission for modification of demand-side programs by filing information and documentation required by 4 CSR 240-3.164(4) when there is a variance of twenty percent (20%) or more in the approved demand-side plan three (3)-year budget and/or any program design modification which is no longer covered by the approved tariff sheets for the program. The commission shall approve, approve with modification acceptable to the electric utility, or reject such applications for approval of modification of demand-side programs within thirty (30) days of the filing of an application under this section, subject to the same guidelines as established in subsections (3)(A) through (C), only after providing the opportunity for a hearing.

(6) Provisions for Customers to Opt-Out of Participation in Utility Demand-Side Programs.

(H) Revocation. A customer may revoke an opt-out by providing written notice to the utility and commission two to four (2–4) months in advance of the calendar year for which it will become eligible for the utility's demand-side program's costs and benefits. Any customer revoking an opt-out to participate in a program will be required to remain in the program for the number of years over which the cost of that program is being recovered, or until the cost of their participation in that program has been recovered.

(8) Collaborative Guidelines.

(A) Utility-Specific Collaboratives. Each electric utility and its stakeholders shall form a utility-specific advisory collaborative for

input on the design, implementation, and review of demand-side programs as well as input on the preparation of market potential studies. This collaborative process may take place simultaneously with the collaborative process related to demand-side programs for 4 CSR 240-22. Collaborative meetings are encouraged to occur at least once each calendar quarter.

(B) State-Wide Collaboratives. Electric utilities and their stakeholders shall form a state-wide advisory collaborative to: 1) address the creation of a technical resource manual that includes values for deemed savings, 2) provide the opportunity for the sharing, among utilities and other stakeholders, of lessons learned from demand-side program planning and implementation, and 3) create a forum for discussing statewide policy issues. Collaborative meetings are encouraged to occur at least once each calendar year. Staff shall provide notice of the statewide collaborative meetings and interested persons may attend such meetings.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Chairman's Request for A Status Report Regarding Energy Efficiency Advisory Groups and Collaboratives	)))	**File No. AO-2011-0035**
In the Matter of the Consideration and Implementation of Section 393.1075, RSMo., The Missouri Energy Efficiency Investment Act	))))	**File No. EX-2010-0368**

CHAIRMAN CLAYTON'S CONCURRENCE TO FINAL ORDER OF RULEMAKING AND RESPONSE TO STAFF'S REPORT

Issue Date: February 9, 2011

This Commissioner files this opinion in support of the Final Order of Rulemaking in File No. EX-2010-0368, regulations formulating future efforts in energy efficiency investments for Missouri investor-owned utilities. Additionally, this opinion sets out this Commissioner's response to the Staff Report on energy efficiency programs, filed in Case No. AO-2011-0035. These two cases demonstrate the new commitment to energy efficiency in Missouri in empowering utility customers to take control of their energy bills.

In response to my request, the Staff of the Commission filed a report on September 15, 2010, describing the work of each energy efficiency advisory group and collaborative currently addressing the energy efficiency issues facing Missouri's investor-owned electric and natural gas utilities. The report is an impressive compilation of material summarizing the changes in Missouri's efforts at improving the efficient delivery and use of energy. As our nation faces an uncertain future with regard to energy-related priorities, the compilation of material demonstrates the Commission's new commitment to assisting customers and utilities in better managing our energy usage through efficiency programs.

The report highlights that in the past several years, Missouri utilities have gone from a few efficiency programs inconsistently scattered among varying sectors to a comprehensive offering of programs with relatively consistent goals among all utilities. Collaboratives or stakeholder groups have been established for each utility to collect input and formulate policy involving diverse groups, associations and agencies with many people effectively engaged. Program offerings are considered, funded and implemented through the collaboratives, with joint recommendations made to the Commission for approval or rejection in a rate case. Procedures are now in place for resolution of disputes among parties and more information is being distributed to more utility customers than ever before with a wide array of opportunities to reduce energy bills.

The concept of energy efficiency is being embraced as never before. Utilities are now recognizing the benefits of efficient use through reduced demand and energy charges and with less urgency in identifying new sources of electric generation or natural gas acquisition. With increased efficiency of energy use, customers are less vulnerable to natural gas price volatility. Utilities are able to delay or avoid costly new energy sources. Demand Response programs are in place in some territories in attempts to avoid the use of costly gas "peaker plants" in times of high demand, which demonstrate that utilities and customers can benefit from reducing power generation costs. Efficiency programs, in general, are smoothing increases in overall demand with more manageable growth, while avoiding the difficulties of securing new, costly baseload generation.

Customers have much to gain from efficient use of energy. While customers benefit from lower utility costs, customers also receive the direct benefit education and training in learning how energy is used, how it is priced and how they can find ways to reduce consumption, thereby , reducing their monthly energy bills. Customers must have greater options through utility programs in evaluating appliance purchases, understanding heating

and cooling needs, learning about new technologies, and learning that one's quality of life does not have to decrease when energy is used more efficiently. To customers, effective energy efficiency programs translate into empowerment to take control of their energy bills. Rebates, incentives and education provide customers with the necessary tools to change behavior and change how energy decisions are made.

The Commission has recognized that these new programs require adequate funding to be effective. In 2000, total funding for efficiency programs focused primarily on weatherization in the amount of $875,000, involving a couple of utilities. In 2010, funding levels have increased to $53 million, including all 8 utilities. The Commission has determined that natural gas utilities should strive for the target of EE funding at a minimum of .5% of their gross revenues, and all large gas utilities are moving toward this policy target. Electric utilities are taking similar steps at developing and delivering a comprehensive offering of efficiency programs with sufficient funding levels.

Lastly, as Missouri ramps up its efficiency programs, its investments and its increase in knowledge and action for customers, this Commission and future Commissions must be prepared to address an evolving utility industry. If load growth is curtailed, there will be pressure to reevaluate how rates are set. Utilities will push for equal or greater returns on efficiency investments and new models of incentives for utility performance in meeting Commission goals and priorities. Utilities will demand fair treatment if downward pressure is applied to their efforts at increasing sales for greater revenue. On the other hand, consumers will demand that the Commission apply close supervision to new programs, carefully scrutinize new rate making requests and cautiously evaluate any modification to the traditional rate of return regulatory compact. This and future Commissions will be faced with balancing these potentially competing positions to ensure that programs are cost-effective,

deliver benefits to both customers and utilities, and do not inequitably shift risk or cost. These are complicated challenges in a new world of energy delivery.

The Commission is prepared to tackle these issues and has taken additional steps to gather information and set policy. First, the Commission continues its statewide energy efficiency study with a partnering agency, the Missouri Energy Center. It is this Commissioner's hope that realistic, achievable goals can be identified to provide greater assistance to those working on Missouri's energy future. Secondly, the Commission has concluded the formal rulemaking process with regulations stemming from Senate Bill 376, the Missouri Energy Efficiency Act. Through these rules, the Commission addresses a number of significant policy questions to provide clarity and certainty for current and future efficiency programs. The Commission has developed the rules with an eye towards flexibility and the understanding that incentive mechanisms will require careful planning and design. The Commission will need several "attempts" at determining the large-scale benefits and costs upon all stakeholders. Lessons learned from those efforts will provide future commissions with the knowledge to develop programs effectively. The rules certainly contemplate a changing world where the regulator may no longer demand greater sales of energy, but rather strive for decreased usage. How does a utility reduce its sales but maintain profitability? The rules are designed to consider this conundrum.

In conclusion, this Commissioner commends and thanks the staff of the Commission for its efforts in working through challenging and potentially controversial issues. Most Missourians are unaware of the work of the Public Service Commission and even fewer know the dedication, the expertise and the significant work ethic of the PSC staff. This report illustrates the giant steps taken in recent years and the future work that lies ahead. It is my hope and request that a similar report be prepared annually, in a format for easy

consumption, so that the public and Commissioners may understand what we are doing on critically important issues and how those issues evolve in the future.

Therefore, it is my request that the Staff prepares an annual update to its report, in a format acceptable to Staff, every September 15th, and makes that update available to the Commission and the public.

For the foregoing reasons, this Commissioner concurs.

Respectfully submitted,

Robert M. Clayton III
Chairman

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Consideration and Implementation of Section 393.1075, the Missouri Energy Efficiency Investment Act	)))	Case No. EX-2010-0368

DISSENTING OPINION OF COMMISSIONER ROBERT S. KENNEY

I write to dissent from the majority's Final Orders of Rulemaking regarding the Missouri Energy Efficiency Investment Act.[1] I specifically dissent as it relates to those Rules allowing utilities to recover lost revenue. I dissent because the Missouri Energy Efficiency Investment Act (the "MEEIA" or the "Act"), the statute under which the Commission has authority to promulgate these Rules, does not authorize recovery of lost revenue; I dissent because authorizing recovery of lost revenues does nothing to remove the disincentive it is ostensibly designed to remove; and I dissent because authorizing recovery of lost revenues does not serve the interests of Missouri citizens.

I believe in energy efficiency as a least-cost way of reducing carbon emissions. Along with greater deployment of renewable resources, nuclear energy, and new technologies such as carbon capture and sequestration, energy efficiency measures are a certain and cost-effective way of reducing carbon emissions. Equally as important, energy efficiency measures give utility customers an opportunity to realize savings in their bills.

The MEEIA is the product of Senate Bill No. 376, which was first read February 16, 2009. As with most pieces of legislation, SB 376 as introduced differed from the Senate Substitute for Senate Committee Substitute for SB 376, which was the Truly

[1] 4 CSR 240-3.163; 4 CSR 240-3.164; 4 CSR 240-20.093; and 4 CSR 240-20.094 (collectively the "Rules").

Agreed To and Finally Passed bill as signed by Governor Nixon. I will discuss the relevance of this fact later. Governor Nixon signed SB 376 in July 2009. It is codified at Section 393.1075 of the Missouri Revised Statutes.

The MEEIA is a laudable piece of legislation. And the rules we have drafted in support of the MEEIA represent the hard work of our staff and numerous stakeholders. They are to be commended for their efforts. But the issue of lost revenue recovery is of such significance that including provisions allowing for the recovery of lost revenues damages the rules as a whole.

1. The MEEIA does not authorize recovery of lost revenue

The MEEIA sets forth the state's policy "to value demand side investment equal to traditional investment in supply and delivery infrastructure and allow recovery of all reasonable and prudent *costs* of delivering cost-effective demand-side programs." Mo. Rev. Stat. § 393.1075.3 (2010) (emphasis supplied). The MEEIA further provides that "the [C]ommission may develop *cost* recovery mechanisms to further encourage investments in demand side programs[.]" Mo. Rev. Stat. § 393.1075.5 (2010) (emphasis supplied).

The Commission is instructed to support the state's policy by providing timely cost recovery for utilities; by ensuring that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that *sustains or enhances utility customers' incentives* to use energy more efficiently; and by providing timely earnings opportunities associated with cost effective measurable and verifiable efficiency savings. Mo. Rev. Stat. § 393.1075.3 (1) – (3) (2010).

There is no language in the language I have cited or anywhere else in the statute that authorizes the recovery of lost revenue. Lost revenue is neither a *cost* of providing service nor a *cost* of providing energy efficiency programs.

The absence of any such language is telling. What is also telling is that the introduced version of SB 376 included language allowing for "recovery of lost sales attributable to approved energy efficiency programs" and "allowing the utility a fixed investment recovery mechanism to recover lost margins[.]" See Senate Bill No. 376, First Regular Session, 95th General Assembly, Read First Time February 16, 2009.

In the Truly Agreed To and Finally Passed version of the bill, signed by the Governor and codified at Section 393.1075, this language is conspicuously absent. While this absence is not dispositive of the General Assembly's intent, it is instructive. Had the General Assembly intended to authorize recovery of lost revenues, it certainly could have kept the language that appears in the introduced version of SB 376. In certain circumstances, such as this one, "omissions should be understood as exclusions." See, Angoff v. M and M Mgmt. Corp., 897 S.W.2d 649, 655 (Mo. Ct. App. 1995)

2. Allowing for recovery of lost revenue does not solve the problem

Encouraging energy efficiency, on the one hand, requires the utility to act counter to its financial interests. So, some form of lost revenue recovery mechanism is necessary, proponents assert, in order to remove this disincentive. But allowing for recovery of lost revenues does nothing to remove the incentive to increase revenues by increasing sales.

The lost revenue recovery mechanism is supposed to ameliorate the effects of any lost revenues specifically tied to measured and verified energy efficiency programs. The

problem, however, is that the evaluation, measurement, and verification program will likely lead to increased contention as parties litigate the accuracy of the evaluation, measurement, and verification program. Moreover, every indication is that measuring and verifying lost revenues associated with specific energy efficiency programs is a highly imprecise undertaking. In addition to leading to more contentious rate cases, this imprecision allows opportunity for mischief in measuring and verifying the savings associated with a particular program. This is particularly true where, as is the case with the Rules, the utility is charged with evaluating, measuring, and verifying its own program.

Only eight states currently use some form of lost revenue recovery mechanism.[2] More states are looking to some form of revenue decoupling as a preferred method of addressing the disincentives associated with promoting energy efficiency. I do not, at this time, express an opinion about the desirability of decoupling. I only note that it provides a more certain means of removing the so-called "throughput incentive," that is the incentive to increase revenues by increasing sales. Additionally, performance incentives are another effective alternative for addressing the disincentives associated with promoting energy efficiency.

Lost revenue recovery mechanisms are also difficult to administer as the ability to properly implement such mechanisms depends to a significant degree on robust evaluation, measurement, and verification. And since any recovered lost revenues are

[2] Colorado, Kentucky, Montana, North Carolina, Ohio, Oklahoma, South Carolina, and Wyoming. Utah is considering a lost revenue recovery mechanism. As of this writing, the status of that mechanism is uncertain. See The Edison Foundation's Institute for Electric Efficiency, "State Electric Efficiency Regulatory Frameworks," July 2010, accessed at http://www.electric-efficiency.com/issueBriefs/IEE_StateRegulatoryFrame_0710.pdf, on February 7, 2011.

only those directly attributable to the energy efficiency program, the utility continues to have the incentive to increase revenues through increased sales.

In addition to the difficulty associated with administering an effective evaluation, measurement, and verification program, the use of the lost revenue recovery mechanism gives rise to many other questions. How are revenues attributable to energy efficiency programs distinguished from decreased sales attributable to any other factor? How are potential off-system sales taken into account that are realized as a result of any energy efficiency programs? Will customers reap the benefits of increased energy efficiency and decreased consumption in the way of lower bills if the "lost revenues" are ultimately recovered? Will customers' incentives to use energy more efficiently be sustained or enhanced, as instructed by the MEEIA? There are too many unanswered questions to leave one comfortable that allowing for recovery of lost revenues will advance the overarching goals of promoting energy efficiency or inure any great benefits to ratepayers.

3. Conclusion

Energy efficiency measures are to be encouraged and implemented to the greatest degree possible. Energy efficiency is a proven, cost-effective means of addressing many problems: global climate change caused by green house gas emissions; air quality issues; consumption and depletion of finite fossil fuel resources; and energy independence and security.

The policy of the state is to value demand side investments equal to other investments. Utilities' financial incentives are to be aligned with helping customers use

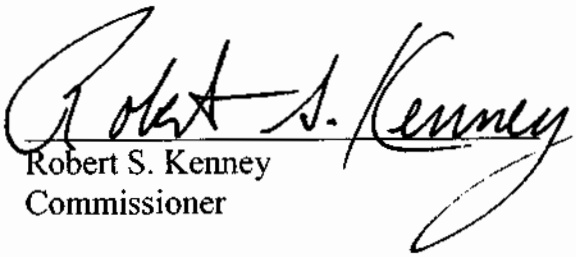
energy more efficiently and in a manner that sustains and enhances their incentives to use energy more efficiently. The MEEIA makes these pronouncements and charges the commission with drafting rules in support of these worthy goals. The MEEIA gives the commission latitude in promulgating rules supportive of its goals. But the MEEIA does not authorize recovery of lost revenues.

Moreover, recovery of lost revenues does not address the problem that it sets out to resolve. While it provides revenue stability for the utility, it does not remove the incentive to promote increased sales. Finally, it is hard to see how allowing for recovery of lost revenues supports or enhances the customers' incentives to use energy more efficiently.

I wholeheartedly and enthusiastically support the overarching principles of the MEEIA. And I recognize the need to align utilities' financial incentives with helping customers decrease consumption of their product. But I do not believe that allowing for recovery of lost revenues achieves this alignment.

For all of the foregoing reasons I dissent.

Respectfully submitted,



Robert S. Kenney
Commissioner

Dated this 9th day of February 2011,
at Jefferson City, Missouri

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 54—Exemptions and Federal Covered Securities

ORDER OF RULEMAKING

By the authority vested in the commissioner of securities under section 409.6-605, RSMo Supp. 2010, the commissioner amends a rule as follows:

15 CSR 30-54.210 Notice Filings for Transactions under Regulation D, Rules 505 and 506 **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 3, 2011 (36 MoReg 128–129). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2063—Behavior Analyst Advisory Board
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the Behavior Analyst Advisory Board under sections 337.305 and 337.310, RSMo Supp. 2010, the board adopts a rule as follows:

20 CSR 2063-1.005 Behavior Analyst Advisory Board **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2011 (36 MoReg 129–131). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2063—Behavior Analyst Advisory Board
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the Behavior Analyst Advisory Board under section 337.310, RSMo Supp. 2010, the board adopts a rule as follows:

20 CSR 2063-1.010 Definitions **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2011 (36 MoReg 132–134). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2063—Behavior Analyst Advisory Board
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the Behavior Analyst Advisory Board under sections 337.310, 337.315, 337.320, and 337.340, RSMo Supp. 2010, the board adopts a rule as follows:

20 CSR 2063-1.015 Fees **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2011 (36 MoReg 135–139). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2063—Behavior Analyst Advisory Board
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the Behavior Analyst Advisory Board under section 337.310, RSMo Supp. 2010, the board adopts a rule as follows:

20 CSR 2063-1.020 Policy for Handling Release of Public Records **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2011 (36 MoReg 140–142). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2063—Behavior Analyst Advisory Board
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the Behavior Analyst Advisory Board under sections 337.315 and 337.345, RSMo Supp. 2010, the board adopts a rule as follows:

20 CSR 2063-2.005 Application for Licensure **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2011 (36

MoReg 143–147). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2063—Behavior Analyst Advisory Board
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the Behavior Analyst Advisory Board under sections 337.030 and 337.320, RSMo Supp. 2010, the board adopts a rule as follows:

20 CSR 2063-2.010 Renewal of License, Inactive License, and Reactivation of License **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2011 (36 MoReg 148–152). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2063—Behavior Analyst Advisory Board
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the Behavior Analyst Advisory Board under section 337.310, RSMo Supp. 2010, the board adopts a rule as follows:

20 CSR 2063-2.015 Notification of Change of Address **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2011 (36 MoReg 153–155). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2063—Behavior Analyst Advisory Board
Chapter 3—Certifying Entities

ORDER OF RULEMAKING

By the authority vested in the Behavior Analyst Advisory Board under section 337.310.1, RSMo Supp. 2010, the board adopts a rule as follows:

20 CSR 2063-3.005 Certifying Entities **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2011 (36 MoReg 156–158). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2063—Behavior Analyst Advisory Board
Chapter 4—Education and Training Requirements

ORDER OF RULEMAKING

By the authority vested in the Behavior Analyst Advisory Board under section 337.310.1(3), RSMo Supp. 2010, the board adopts a rule as follows:

20 CSR 2063-4.005 Education and Training Requirements **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2011 (36 MoReg 159–161). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2063—Behavior Analyst Advisory Board
Chapter 4—Education and Training Requirements

ORDER OF RULEMAKING

By the authority vested in the Behavior Analyst Advisory Board under section 337.310.2, RSMo Supp. 2010, the board adopts a rule as follows:

20 CSR 2063-4.010 Continuing Education Requirements **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2011 (36 MoReg 162–166). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2063—Behavior Analyst Advisory Board
Chapter 5—Supervision

ORDER OF RULEMAKING

By the authority vested in the Behavior Analyst Advisory Board under section 337.310.1, RSMo Supp. 2010, the board adopts a rule as follows:

20 CSR 2063-5.005 Supervision of Assistant Behavior Analysts **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2011 (36 MoReg 167–172). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 2—Licensing of Physicians and Surgeons

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under sections 334.090.2 and 334.125, RSMo 2000, the board amends a rule as follows:

20 CSR 2150-2.080 Fees **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 3, 2011 (36 MoReg 173–175). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2267—Office of Tattooing, Body Piercing, and Branding
Chapter 2—Licensing Requirements

ORDER OF RULEMAKING

By the authority vested in the Office of Tattooing, Body Piercing, and Branding under section 324.522, RSMo Supp. 2010, the office amends a rule as follows:

20 CSR 2267-2.020 Fees **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 15, 2010 (35 MoReg 1849–1851). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Office of Tattooing, Body Piercing, and Branding received two (2) comments on the proposed amendment.

COMMENT #1: A comment was received by email in support of the fee increase.
RESPONSE: No changes have been made to the rule as a result of this comment.

COMMENT #2: A comment was received from Gene A. Bess, Owner & Tattoo Artist, Body Piercer, and Brander of Firehouse Tattoos & Body Piercing Studio, requesting that the office review section 1.310, RSMo Supp. 2010. This section is known as the "Big Government Get Off My Back Act."
RESPONSE: The division is statutorily obligated to enforce and administer the provisions of sections 324.520 to 324.526, RSMo. Pursuant to section 324.522, RSMo Supp. 2010, the division is responsible for establishing fees by rule. The division is proposing to increase the application and renewal fees in order to carry out its regulatory responsibilities as there will be inadequate funds without a fee increase. Therefore, no changes have been made to the rule as a result of this comment.

MISSOURI REGISTER

Dissolutions

April 15, 2011
Vol. 36, No. 8

The Secretary of State is required by sections 347.141 and 359.481, RSMo 2000, to publish dissolutions of limited liability companies and limited partnerships. The content requirements for the one-time publishing of these notices are prescribed by statute. This listing is published pursuant to these statutes. We request that documents submitted for publication in this section be submitted in camera ready 8 1/2" x 11" manuscript by email to dissolutions@sos.mo.gov.

NOTICE OF DISSOLUTION OF LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST DOLCE AUDIO, L.L.C.

On February 28, 2011, Dolce Audio, L.L.C., a Missouri limited liability company, filed its Notice of Winding Up for a Limited Liability Company with the Missouri Secretary of State effective February 28, 2011.

Any claims against Dolce Audio, L.L.C. may be sent to: Dolce Audio d/b/a Primus Audio Pleasure, P.O. Box 26421, Overland Park, Kansas 66225-6421. Claims must include claimant's name, address and telephone number; amount of claim; basis for claim; date on which claim arose; and documentation of the claim. A claim against Dolce Audio, L.L.C. will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication of this notice.

NOTICE OF WINDING UP OF LIMITED LIABILITY COMPANY

To: All creditors of and claimants against GREENWOOD DEVELOPMENT, L.L.C., a Missouri Limited Liability Company.

On **March 4, 2011,** GREENWOOD DEVELOPMENT, L.L.C., a Missouri Limited Liability Company, Charter Number **LC0003951**, filed its notice of winding up with the Missouri Secretary of State.

Said limited liability company requests that all persons and organizations who have claims against it present them immediately by letter to the company c/o CHINNERY EVANS & NAIL, P.C., 800 NE Vanderbilt Lane, Lee's Summit, Missouri 64064.

All claims must include the following information:

1. Name and current address of the claimant.
2. The amount claimed.
3. The clear and concise statement of the facts supporting the claim.
4. The date the claim was incurred.

NOTICE: Because of the winding up of GREENWOOD DEVELOPMENT, L.L.C., any claims against it will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of the two notices authorized by statute, whichever is published last.

NOTE: CLAIMS AGAINST GREENWOOD DEVELOPMENT, L.L.C., WILL BE BARRED UNLESS A PROCEEDING TO ENFORCE THE CLAIM IS COMMENCED WITHIN THREE YEARS AFTER THE PUBLICATION OF THIS NOTICE.

NOTICE OF WINDING UP OF LIMITED LIABILITY COMPANY

To: All creditors of and claimants against GPR ENTERPRISES, L.L.C., a Missouri limited liability company.

On **March 7, 2011**, GPR ENTERPRISES, L.L.C., a Missouri limited liability company, Charter Number **LC0024203**, filed its notice of winding up with the Missouri Secretary of State.

Said limited liability company requests that all persons and organizations who have claims against it present them immediately by letter to the company c/o CHINNERY EVANS & NAIL, P.C., 800 NE Vanderbilt Lane, Lee's Summit, Missouri 64064.

All claims must include the following information:

1. Name and current address of the claimant.
2. The amount claimed.
3. The clear and concise statement of the facts supporting the claim.
4. The date the claim was incurred.

NOTICE: Because of the winding up of GPR ENTERPRISES, L.L.C., any claims against it will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of the two notices authorized by statute, whichever is published last.

NOTE: CLAIMS AGAINST GPR ENTERPRISES, L.L.C., WILL BE BARRED UNLESS A PROCEEDING TO ENFORCE THE CLAIM IS COMMENCED WITHIN THREE YEARS AFTER THE PUBLICATION OF THIS NOTICE.

NOTICE OF CORPORATE DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST BANNER ENVIRONMENTAL AND CONSTRUCTION SERVICES, INC.

Effective January 31, 2011, Banner Environmental and Construction Services, Inc., a Missouri corporation, filed its Articles of Dissolution with the Missouri Secretary of State. Dissolution was effective that date.

Banner Environmental and Construction Services, Inc. requests any claims against corporation be presented immediately by letter to Jason Norbury, Law Office of Jason Norbury, P.C., 230 SW Main Street, Suite 210, Lee's Summit, MO 64063.

Claims must include: name and address of claimant; amount of claim; basis of claim with date(s) events occurred providing basis; and documentation for claim.

All claims against corporation will be barred unless a proceeding to enforce the claim is commenced within two years after publication of this notice.

NOTICE OF DISSOLUTION AND WINDING UP TO ALL CREDITORS OF AND CLAIMANTS AGAINST CDDC BOEMLER PARTNERS, L.P.

On February 18, 2011, CDDC Boemler Partners, L.P., a Missouri limited partnership, was dissolved upon the filing of a Certificate of Cancellation with the Secretary of State.

Said partnership requests that all persons and organization who have claims against it present them immediately by letter to: CDDC Boemler Partners, L.P. c/o Donald W. Paule, 165 N. Meramec Ave., Suite 110, St. Louis, MO 63105. All claims must include the following information: the name, address and telephone number of the claimant; the amount of claim; a brief description of the nature of or the basis for the claim; the date on which the claim arose; and documentation for the claim.

ANY CLAIMS AGAINST CDDC BOEMLER PARTNERS, L.P. WILL BE BARRED UNLESS A PROCEEDING TO ENFORCE THE CLAIM IS COMMENCED WITHIN THREE YEARS AFTER THE PUBLICATION DATE OF THIS NOTICE PURSUANT TO SECTION 359.481 RSMO.

Rule Changes Since Update to Code of State Regulations

This cumulative table gives you the latest status of rules. It contains citations of rulemakings adopted or proposed after deadline for the monthly Update Service to the *Code of State Regulations*, citations are to volume and page number in the *Missouri Register*, except for material in this issue. The first number in the table cite refers to the volume number or the publication year—30 (2005) and 31 (2006). MoReg refers to *Missouri Register* and the numbers refer to a specific *Register* page, R indicates a rescission, W indicates a withdrawal, S indicates a statement of actual cost, T indicates an order terminating a rule, N.A. indicates not applicable, RAN indicates a rule action notice, RUC indicates a rule under consideration, and F indicates future effective date.

Rule Number	Agency	Emergency	Proposed	Order	In Addition
	OFFICE OF ADMINISTRATION				
1 CSR 10	State Officials' Salary Compensation Schedule				30 MoReg 2435 35 MoReg 1815
1 CSR 10-15.010	Commissioner of Administration	36 MoReg 273	36 MoReg 448		
	DEPARTMENT OF AGRICULTURE				
2 CSR 30-1.010	Animal Health		35 MoReg 1845		
2 CSR 30-2.010	Animal Health		35 MoReg 1845		
2 CSR 30-2.020	Animal Health		35 MoReg 1846		
2 CSR 30-6.020	Animal Health		36 MoReg 524		
2 CSR 30-9.020	Animal Health	36 MoReg 217	36 MoReg 221		
2 CSR 80-5.010	State Milk Board		36 MoReg 980		
2 CSR 80-6.041	State Milk Board		36 MoReg 224		
2 CSR 90	Weights and Measures				35 MoReg 1284
2 CSR 90-10.001	Weights and Measures		36 MoReg 885		
2 CSR 90-10.011	Weights and Measures		36 MoReg 885		
2 CSR 90-10.012	Weights and Measures		36 MoReg 886		
2 CSR 90-10.013	Weights and Measures		36 MoReg 887		
2 CSR 90-10.014	Weights and Measures		36 MoReg 889		
2 CSR 90-10.015	Weights and Measures		36 MoReg 890		
2 CSR 90-10.020	Weights and Measures		36 MoReg 890		
2 CSR 90-10.040	Weights and Measures		36 MoReg 891		
2 CSR 90-10.060	Weights and Measures		36 MoReg 892R		
2 CSR 90-10.070	Weights and Measures		36 MoReg 892R		
2 CSR 90-10.090	Weights and Measures		36 MoReg 892		
2 CSR 90-10.120	Weights and Measures		36 MoReg 892		
2 CSR 90-10.130	Weights and Measures		36 MoReg 893		
2 CSR 90-10.140	Weights and Measures		36 MoReg 893		
2 CSR 90-10.145	Weights and Measures		36 MoReg 894		
2 CSR 90-10.150	Weights and Measures		36 MoReg 894		
2 CSR 90-10.155	Weights and Measures		36 MoReg 896		
2 CSR 90-10.160	Weights and Measures		36 MoReg 896		
2 CSR 90-10.165	Weights and Measures		36 MoReg 896		
2 CSR 90-10.170	Weights and Measures		36 MoReg 897		
2 CSR 90-10.175	Weights and Measures		36 MoReg 897		
2 CSR 90-10.180	Weights and Measures		36 MoReg 898		
2 CSR 90-10.185	Weights and Measures		36 MoReg 898		
2 CSR 90-30.080	Weights and Measures		36 MoReg 707		
2 CSR 90-30.086	Weights and Measures		36 MoReg 709		
2 CSR 110-3.010	Office of the Director		35 MoReg 1848		
	DEPARTMENT OF CONSERVATION				
3 CSR 10-4.135	Conservation Commission		36 MoReg 710		
3 CSR 10-5.205	Conservation Commission		This Issue		
3 CSR 10-5.215	Conservation Commission		36 MoReg 710		
3 CSR 10-7.450	Conservation Commission		36 MoReg 710		
3 CSR 10-7.455	Conservation Commission				36 MoReg 676
3 CSR 10-8.515	Conservation Commission		36 MoReg 711		
3 CSR 10-9.110	Conservation Commission		This Issue		
3 CSR 10-10.711	Conservation Commission		36 MoReg 711R		
3 CSR 10-10.716	Conservation Commission		36 MoReg 712R		
3 CSR 10-11.120	Conservation Commission		This Issue		
3 CSR 10-11.205	Conservation Commission		This Issue		
3 CSR 10-11.210	Conservation Commission		This Issue		
3 CSR 10-12.110	Conservation Commission		This Issue		
3 CSR 10-12.115	Conservation Commission		This Issue		
3 CSR 10-12.125	Conservation Commission		This Issue		
3 CSR 10-12.135	Conservation Commission		This Issue		
3 CSR 10-12.140	Conservation Commission		This Issue		
3 CSR 10-12.145	Conservation Commission		This Issue		
3 CSR 10-20.805	Conservation Commission		This Issue		
	DEPARTMENT OF ECONOMIC DEVELOPMENT				
4 CSR 240-2.010	Public Service Commission		This Issue		
4 CSR 240-2.025	Public Service Commission		This Issue		
4 CSR 240-2.030	Public Service Commission		This Issue		

Rule Number	Agency	Emergency	Proposed	Order	In Addition
4 CSR 240-2.040	Public Service Commission		This Issue		
4 CSR 240-2.045	Public Service Commission		This IssueR		
4 CSR 240-2.050	Public Service Commission		This Issue		
4 CSR 240-2.060	Public Service Commission		This Issue		
4 CSR 240-2.062	Public Service Commission		This Issue		
4 CSR 240-2.065	Public Service Commission		This Issue		
4 CSR 240-2.070	Public Service Commission		This Issue		
4 CSR 240-2.075	Public Service Commission		This Issue		
4 CSR 240-2.080	Public Service Commission		This Issue		
4 CSR 240-2.085	Public Service Commission		This IssueR		
4 CSR 240-2.110	Public Service Commission		This Issue		
4 CSR 240-2.116	Public Service Commission		This Issue		
4 CSR 240-2.125	Public Service Commission		This Issue		
4 CSR 240-2.130	Public Service Commission		This Issue		
4 CSR 240-2.135	Public Service Commission		This Issue		
4 CSR 240-2.140	Public Service Commission		This Issue		
4 CSR 240-2.160	Public Service Commission		This Issue		
4 CSR 240-2.180	Public Service Commission		This Issue		
4 CSR 240-3.163	Public Service Commission		35 MoReg 1610	This Issue	
4 CSR 240-3.164	Public Service Commission		35 MoReg 1629	This Issue	
4 CSR 240-3.510	Public Service Commission		35 MoReg 1736	36 MoReg 997	
4 CSR 240-20.093	Public Service Commission		35 MoReg 1647	This Issue	
4 CSR 240-20.094	Public Service Commission		35 MoReg 1667	This Issue	
4 CSR 240-20.100	Public Service Commission				36 MoReg 1002 36 MoReg 1008
4 CSR 240-22.010	Public Service Commission		35 MoReg 1737		
4 CSR 240-22.020	Public Service Commission		35 MoReg 1738		
4 CSR 240-22.030	Public Service Commission		35 MoReg 1741		
4 CSR 240-22.040	Public Service Commission		35 MoReg 1746		
4 CSR 240-22.045	Public Service Commission		35 MoReg 1749		
4 CSR 240-22.050	Public Service Commission		35 MoReg 1753		
4 CSR 240-22.060	Public Service Commission		35 MoReg 1761		
4 CSR 240-22.070	Public Service Commission		35 MoReg 1766		
4 CSR 240-22.080	Public Service Commission		35 MoReg 1769		
4 CSR 240-32.190	Public Service Commission		35 MoReg 1848		36 MoReg 190
4 CSR 240-123.080	Public Service Commission		35 MoReg 1686	36 MoReg 905	
4 CSR 240-125.090	Public Service Commission		35 MoReg 1686	36 MoReg 905	
	DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION				
5 CSR 50-345.105	Office of Quality Schools		This Issue		
5 CSR 70-742.141	Special Education		N.A.	36 MoReg 997	
	DEPARTMENT OF HIGHER EDUCATION				
6 CSR 10-2.080	Commissioner of Higher Education		36 MoReg 229		
6 CSR 10-2.150	Commissioner of Higher Education		36 MoReg 230		
6 CSR 10-2.180	Commissioner of Higher Education		36 MoReg 980		
6 CSR 10-2.190	Commissioner of Higher Education		36 MoReg 982		
	DEPARTMENT OF TRANSPORTATION				
7 CSR 10-25.010	Missouri Highways and Transportation Commission				36 MoReg 939
	DEPARTMENT OF NATURAL RESOURCES				
10 CSR 10-2.040	Air Conservation Commission		36 MoReg 985R		
10 CSR 10-3.060	Air Conservation Commission		36 MoReg 985R		
10 CSR 10-4.040	Air Conservation Commission		36 MoReg 985R		
10 CSR 10-5.030	Air Conservation Commission		36 MoReg 986R		
10 CSR 10-5.330	Air Conservation Commission		36 MoReg 14 36 MoReg 712		
10 CSR 10-5.340	Air Conservation Commission		36 MoReg 32 36 MoReg 730		
10 CSR 10-5.442	Air Conservation Commission		36 MoReg 38 36 MoReg 736		
10 CSR 10-5.455	Air Conservation Commission		36 MoReg 47 36 MoReg 745		
10 CSR 10-6.020	Air Conservation Commission		36 MoReg 51 36 MoReg 749		
10 CSR 10-6.060	Air Conservation Commission	36 MoReg 218	36 MoReg 86 36 MoReg 784		36 MoReg 676
10 CSR 10-6.065	Air Conservation Commission	36 MoReg 219	36 MoReg 95 36 MoReg 793		36 MoReg 677
10 CSR 10-6.200	Air Conservation Commission		36 MoReg 103 36 MoReg 801		
10 CSR 10-6.300	Air Conservation Commission		36 MoReg 816		
10 CSR 10-6.405	Air Conservation Commission		36 MoReg 986		
10 CSR 20-8.110	Clean Water Commission		35 MoReg 1454		
10 CSR 23-4.010	Division of Geology and Land Survey		36 MoReg 118		
10 CSR 23-4.020	Division of Geology and Land Survey		36 MoReg 119		
10 CSR 23-4.030	Division of Geology and Land Survey		36 MoReg 120		
10 CSR 23-4.040	Division of Geology and Land Survey		36 MoReg 120R		
10 CSR 23-4.050	Division of Geology and Land Survey		36 MoReg 121		

Rule Number	Agency	Emergency	Proposed	Order	In Addition
10 CSR 23-4.060	Division of Geology and Land Survey		36 MoReg 121		
10 CSR 23-4.070	Division of Geology and Land Survey		36 MoReg 126R		
10 CSR 23-4.080	Division of Geology and Land Survey		36 MoReg 126		
	DEPARTMENT OF PUBLIC SAFETY				
11 CSR 45-4.030	Missouri Gaming Commission		36 MoReg 988		
11 CSR 45-5.130	Missouri Gaming Commission		35 MoReg 1780		
11 CSR 45-7.070	Missouri Gaming Commission		35 MoReg 1780		
11 CSR 45-9.102	Missouri Gaming Commission		35 MoReg 1781		
11 CSR 45-9.105	Missouri Gaming Commission		35 MoReg 1781		
11 CSR 45-9.119	Missouri Gaming Commission		35 MoReg 1781		
11 CSR 45-9.121	Missouri Gaming Commission		35 MoReg 1787		
11 CSR 45-9.122	Missouri Gaming Commission		35 MoReg 1787		
11 CSR 45-10.020	Missouri Gaming Commission		36 MoReg 988		
11 CSR 45-12.090	Missouri Gaming Commission		36 MoReg 127		
	DEPARTMENT OF REVENUE				
12 CSR 10-3.888	Director of Revenue		36 MoReg 899R		
12 CSR 10-23.475	Director of Revenue	36 MoReg 875	36 MoReg 899		
12 CSR 10-41.010	Director of Revenue	35 MoReg 1735	35 MoReg 1787	36 MoReg 905	
12 CSR 30-3.010	State Tax Commission		36 MoReg 902		
	DEPARTMENT OF SOCIAL SERVICES				
13 CSR 30-2.010	Child Support Enforcement		35 MoReg 1688	36 MoReg 936	
13 CSR 35-32.020	Children's Division		36 MoReg 989		
13 CSR 35-32.030	Children's Division		36 MoReg 994		
13 CSR 40-2.370	Family Support Division		35 MoReg 1556	36 MoReg 937	
13 CSR 70-3.110	MO HealthNet Division		36 MoReg 128R		
13 CSR 70-20.320	MO HealthNet Division	35 MoReg 1072	35 MoReg 1114		
13 CSR 70-97.010	MO HealthNet Division		36 MoReg 128		
	ELECTED OFFICIALS				
15 CSR 30-54.210	Secretary of State		36 MoReg 128	This Issue	
15 CSR 60-8.010	Attorney General		36 MoReg 230		
	RETIREMENT SYSTEMS				
16 CSR 10-4.010	The Public School Retirement System of Missouri		36 MoReg 231		
16 CSR 10-6.040	The Public School Retirement System of Missouri		36 MoReg 231		
16 CSR 50-2.030	The County Employees' Retirement Fund		35 MoReg 1791		
16 CSR 50-3.010	The County Employees' Retirement Fund		35 MoReg 1791		
16 CSR 50-10.010	The County Employees' Retirement Fund		36 MoReg 527		
16 CSR 50-10.030	The County Employees' Retirement Fund		36 MoReg 527		
16 CSR 50-10.070	The County Employees' Retirement Fund		36 MoReg 527		
16 CSR 50-10.080	The County Employees' Retirement Fund		36 MoReg 528		
	DEPARTMENT OF HEALTH AND SENIOR SERVICES				
19 CSR 30-61.105	Division of Regulation and Licensure		36 MoReg 902		
19 CSR 30-61.175	Division of Regulation and Licensure		36 MoReg 903		
19 CSR 30-62.102	Division of Regulation and Licensure		36 MoReg 903		
19 CSR 30-62.182	Division of Regulation and Licensure		36 MoReg 904		
19 CSR 60-50	Missouri Health Facilities Review Committee				36 MoReg 940 36 MoReg 1012
19 CSR 60-50.200	Missouri Health Facilities Review Committee		35 MoReg 1562	36 MoReg 998	
19 CSR 60-50.300	Missouri Health Facilities Review Committee		35 MoReg 1562	36 MoReg 998	
19 CSR 60-50.400	Missouri Health Facilities Review Committee		35 MoReg 1563	36 MoReg 999	
19 CSR 60-50.410	Missouri Health Facilities Review Committee		35 MoReg 1564	36 MoReg 999	
19 CSR 60-50.420	Missouri Health Facilities Review Committee		35 MoReg 1565	36 MoReg 999	
19 CSR 60-50.430	Missouri Health Facilities Review Committee		35 MoReg 1566	36 MoReg 1000	
19 CSR 60-50.440	Missouri Health Facilities Review Committee		35 MoReg 1569	36 MoReg 1000	
19 CSR 60-50.450	Missouri Health Facilities Review Committee		35 MoReg 1569	36 MoReg 1000	
19 CSR 60-50.470	Missouri Health Facilities Review Committee		35 MoReg 1571	36 MoReg 1001	
19 CSR 60-50.500	Missouri Health Facilities Review Committee		35 MoReg 1571	36 MoReg 1001	
19 CSR 60-50.600	Missouri Health Facilities Review Committee		35 MoReg 1572	36 MoReg 1001	
19 CSR 60-50.700	Missouri Health Facilities Review Committee		35 MoReg 1572	36 MoReg 1001	
19 CSR 60-50.800	Missouri Health Facilities Review Committee		35 MoReg 1573	36 MoReg 1001	
	DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION				
20 CSR	Construction Claims Binding Arbitration Cap				33 MoReg 2446 35 MoReg 654 36 MoReg 192
20 CSR	Medical Malpractice				31 MoReg 616 32 MoReg 545
20 CSR	Sovereign Immunity Limits				33 MoReg 2446 35 MoReg 318
20 CSR	State Legal Expense Fund Cap				33 MoReg 2446 35 MoReg 654 36 MoReg 192
20 CSR 200-1.005	Insurance Solvency and Company Regulation		36 MoReg 931		
20 CSR 200-1.030	Insurance Solvency and Company Regulation		36 MoReg 931		
20 CSR 200-1.160	Insurance Solvency and Company Regulation		36 MoReg 932		

Rule Number	Agency	Emergency	Proposed	Order	In Addition
20 CSR 400-1.170	Life, Annuities and Health		36 MoReg 933		
20 CSR 400-2.180	Life, Annuities and Health		35 MoReg 1485	36 MoReg 937	
20 CSR 400-8.200	Life, Annuities and Health		36 MoReg 934		
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22 CSR 10-3.045	Plan Utilization Review Policy	36 MoReg 408	Jan. 1, 2011	June 29, 2011
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22 CSR 10-3.092	Dental Benefit Summary	36 MoReg 439	Jan. 1, 2011	June 29, 2011
22 CSR 10-3.093	Vision Benefit Summary	36 MoReg 441	Jan. 1, 2011	June 29, 2011

Executive Orders	Subject Matter	Filed Date	Publication
	2011		
11-05	Orders the Missouri Department of Transportation to assist local jurisdictions in counties that: 1) received record snowfalls; and 2) continuing snow clearance exceeds their capabilities	Feb. 4, 2011	36 MoReg 883
11-04	Activates the state militia in response to severe weather that began on January 31, 2011	Jan. 31, 2011	36 MoReg 881
11-03	Declares a state of emergency exists in the state of Missouri and directs that the Missouri State Emergency Operations Plan be activated	Jan. 31, 2011	36 MoReg 879
11-02	Extends the declaration of emergency contained in Executive Order 10-27 and the terms of Executive Order 11-01 through February 28, 2011	Jan. 28, 2011	36 MoReg 877
11-01	Gives the Director of the Department of Natural Resources the authority to temporarily suspend regulations in the aftermath of severe winter weather that began on December 30	Jan. 4, 2011	36 MoReg 705
	2010		
10-27	Declares a state of emergency and directs the Missouri State Emergency Operations Plan be activated due to severe weather that began on December 30	Dec. 31, 2010	36 MoReg 446
Emergency Declaration	Proclaims an emergency declaration concerning the damage and structural integrity of the State Route A bridge over the Weldon Fork of the Thompson River	Sept. 28, 2010	35 MoReg 1531
10-26	Designates members of the governor's staff to have supervisory authority over certain departments, divisions, and agencies	Sept. 24, 2010	35 MoReg 1529
10-25	Extends the declaration of emergency contained in Executive Order 10-22 for the purpose of protecting the safety and welfare of our fellow Missourians	July 20, 2010	35 MoReg 1244
10-24	Creates the Code of Fair Practices for the Executive Branch of State Government and supersedes paragraph one of Executive Order 05-30	July 9, 2010	35 MoReg 1167
Emergency Declaration	Proclaims that an emergency exists concerning the damage and structural integrity of the U.S. Route 24 bridge over the Grand River	July 2, 2010	35 MoReg 1165
10-23	Activates the state militia in response to severe weather that began on June 12	June 23, 2010	35 MoReg 1078
10-22	Declares a state of emergency and directs the Missouri State Emergency Operations Plan be activated due to severe weather that began on June 12	June 21, 2010	35 MoReg 1076
10-21	Activates the Missouri State Emergency Operations Center	June 15, 2010	35 MoReg 1018
10-20	Establishes the Missouri Civil War Sesquicentennial Commission	April 2, 2010	35 MoReg 754
10-19	Amends Executive Order 09-17 to give the commissioner of the Office of Administration supervisory authority over the Transform Missouri Project	March 2, 2010	35 MoReg 637
10-18	Establishes the Children in Nature Challenge to challenge Missouri communities to take action to enhance children's education about nature, and to increase children's opportunities to personally experience nature and the outdoors	Feb. 26, 2010	35 MoReg 573
10-17	Establishes a Missouri Emancipation Day Commission to promote, consider, and recommend appropriate activities for the annual recognition and celebration of Emancipation Day	Feb. 2, 2010	35 MoReg 525
10-16	Transfers the scholarship portion of the A+ Schools Program from the Missouri Department of Elementary and Secondary Education to the Missouri Department of Higher Education	Jan. 29, 2010	35 MoReg 447
10-15	Transfers the Breath Alcohol Program from the Missouri Department of Transportation to the Missouri Department of Health and Senior Services	Jan. 29, 2010	35 MoReg 445
10-14	Designates members of the governor's staff to have supervisory authority over certain departments, divisions, and agencies	Jan. 29, 2010	35 MoReg 443
10-13	Directs the Department of Social Services to disband the Missouri Task Force on Youth Aging Out of Foster Care	Jan. 15, 2010	35 MoReg 364
10-12	Rescinds Executive Orders 98-14, 95-21, 95-17, and 94-19 and terminates the Governor's Commission on Driving While Intoxicated and Impaired Driving	Jan. 15, 2010	35 MoReg 363
10-11	Rescinds Executive Order 05-41 and terminates the Governor's Advisory Council for Veterans Affairs and assigns its duties to the Missouri Veterans Commission	Jan. 15, 2010	35 MoReg 362
10-10	Rescinds Executive Order 01-08 and terminates the Personal Independence Commission and assigns its duties to the Governor's Council on Disability	Jan. 15, 2010	35 MoReg 361

Executive Orders	Subject Matter	Filed Date	Publication
10-09	Rescinds Executive Orders 95-10, 96-11, and 98-13 and terminates the Governor's Council on AIDS and transfers their duties to the Statewide HIV/STD Prevention Community Planning Group within the Department of Health and Senior Services	Jan. 15, 2010	35 MoReg 360
10-08	Rescinds Executive Order 04-07 and terminates the Missouri Commission on Patient Safety	Jan. 15, 2010	35 MoReg 358
10-07	Rescinds Executive Order 01-16 and terminates the Missouri Commission on Intergovernmental Cooperation	Jan. 15, 2010	35 MoReg 357
10-06	Rescinds Executive Order 05-13 and terminates the Governor's Advisory Council on Plant Biotechnology and assigns its duties to the Missouri Technology Corporation	Jan. 15, 2010	35 MoReg 356
10-05	Rescinds Executive Order 95-28 and terminates the Missouri Board of Geographic Names	Jan. 15, 2010	35 MoReg 355
10-04	Rescinds Executive Order 03-10 and terminates the Missouri Energy Policy Council	Jan. 15, 2010	35 MoReg 354
10-03	Rescinds Executive Order 03-01 and terminates the Missouri Lewis and Clark Bicentennial Commission	Jan. 15, 2010	35 MoReg 353
10-02	Rescinds Executive Order 07-29 and terminates the Governor's Advisory Council on Aging and assigns its duties to the State Board of Senior Services	Jan. 15, 2010	35 MoReg 352
10-01	Rescinds Executive Order 01-15 and terminates the Missouri Commission on Total Compensation	Jan. 15, 2010	35 MoReg 351

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2. List the rule number and title (more than one rule may be listed);
3. Certify that the attached copies of the rulemaking are complete and accurate;
4. State the economic impact on small business (for proposed rulemaking);
5. State that a takings analysis has occurred (for proposed rulemaking);
6. Contain an authorized signature of the department director or his/her designee, which must be on file with Administrative Rules;
7. Be dated with the date the proposed rulemaking or order of rulemaking is filed with Administrative Rules. If no date is on the letter, the file date will be stamped on the letter by Administrative Rules' staff and will serve as the date of the letter; and
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